Business Regulation Committee

Tuesday, September 13, 2005
9:00 AM - 12:00 PM
REED HALL

Revised

Allan G. Bense
Speaker

Frank Attkisson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Business Regulation Committee

Start Date and Time:	Tuesday, September 13, 2005 09:00 am
End Date and Time:	Tuesday, September 13, 2005 12:00 pm
Location:	Reed Hall (102 HOB)
Duration:	3.00 hrs

Workshops:

1. Implementation of Constitutional Amendment authorizing slot machines at certain pari-mutuel facilities in Broward and Miami-Dade counties. Testimony requested from the pari-mutuel industry and the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering.

2. Direct Shipment of Wine to Florida Consumers from out-of-state wineries:

A) Overview presentation by Richard M. Blau, Chairman , ABA Committee on Beverage Alcoholic Practice, relating to the "Three Tier System" of alcoholic beverage distribution and how Florida's distribution system may be affected by recent federal court decisions concerning the direct shipment of wine by out-of-state shippers to Florida consumers.

B) Committee discussion of direct shipping with a panel consisting of persons interested in the direct shipment issue.

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TAB 1

Implementation of Slot Machine Gaming

September 2, 2005

Status Update

During the 2004 general election, voters approved an amendment to the Florida Constitution that permitted two counties, Miami-Dade and Broward, to hold referenda on whether to permit slot machines in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in Miami-Dade and Broward Counties on March 8, 2005. The referendum was defeated in Miami-Dade, but passed in Broward County.

Article X, Section 23, specifies that in the regular session following voter approval of the amendment that "the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment." Both the Senate and House passed their own versions of slot machine implementing legislation during the regular session, but an agreed upon version failed to pass.

Subsequent to the adjournment of the 2005 Legislative Session three separate legal challenges have arisen. In addition, the Broward County Commission has contracted with a consultant to begin drafting rules for the operation of slot machines at pari-mutuel facilities in Broward County.

PPI, Inc. et al. v. DBPR (Filed at DBPR; currently on appeal at the 1st DCA)

Representative Ellyn Bogdanoff petitioned the Department of Business and Professional Regulation (DBPR) for a declaratory statement holding that the slot machine constitutional amendment is of no force or effect until the Florida Legislature enacts implementing legislation and therefore the Division of Pari-Mutuel Wagering has the right to take disciplinary action against any licensee that possesses or operates a slot machine. The Division determined that it has jurisdiction to issue the declaratory statement.

The tracks filed a petition in the First District Court of Appeal asking the court to prohibit DBPR from responding to the petition for declaratory statement, arguing that the declaration is in excess of the Division's jurisdiction.

The First DCA issued an Order to Show Cause to DBPR why the writ of prohibition should not be granted. DBPR filed a Response on July 20 and the appellants filed their Reply on August 15, 2005.

No Casinos, Inc. v. Hartman & Tyner, et al. (Circuit Court in Leon County)

No Casinos, Inc., a Florida association interested in limiting gambling in Florida, brought suit against the four pari-mutuel facilities and DBPR seeking a declaratory judgment that the amendment is of no force or effect until the Legislature enacts implementing legislation. The tracks filed a motion to dismiss or, in the alternative, to change venue to Broward County. This case was voluntarily dismissed by the plaintiffs on August 23, 2005.

Hartman & Tyner, Inc. et al. v. Satz (Circuit Court in Broward County)
Satz v. Hartman & Tyner, Inc. et al. (4th DCA)

The pari-mutuels filed this suit asking the court to declare that they are entitled to transport, possess, install, and operate slot machines and to permanently enjoin the State Attorney from prosecuting these facilities for transporting, possessing, installing, or operating slot machines at their facilities in Broward County.

At a hearing on June 21, Judge Moe denied the state attorney's motions for continuance, dismissal, and for failure to join an indispensable party and granted the declaratory and injunctive relief that was requested. The State Attorney was permanently enjoined from initiating criminal or civil action against the plaintiffs for transporting, possessing, installing, or operating slot machines on or after July 1, 2005. The judge retained jurisdiction to allow the Broward County Commission to enact rules and regulations to implement the amendment.

The rules of appellate procedure provide that the final judgment is stayed (not effective) during the time the appeal is pending unless a party successfully demonstrates a compelling reason to the court to vacate the stay. At an August 22nd hearing on the plaintiffs' motion to vacate the stay Judge Moe found for the plaintiffs. The Order Granting Motion to Vacate Automatic Stay on Appeal, filed on August 30, 2005, stated that there were compelling circumstances which warranted the lifting of the stay that being "the people's right to have their vote count, and the Legislature's deliberate or negligent thwarting of that most compelling right" and the automatic stay was vacated during the pendency of the Appeal of that Final Judgment. It is anticipated that a motion seeking reinstatement of the stay will be filed in the near future with the 4th DCA.

State Attorney Mike Satz filed a notice of appeal with the Fourth District Court of Appeal. The tracks moved that the appeal be expedited, which was denied. The court has granted the motions of both the Legislature and the Governor to file amicus briefs in the case, which will be due in mid-September.

Implementation of Slots Regulations by Broward County

Pursuant to Judge Moe's ruling, the Broward County Commission on June 28, 2005 directed commission staff to hire a consultant to draft rules and regulations for operation of slot machines at pari-mutuel facilities in Broward County.

Broward County has contracted with Gaming Laboratories International [GLI], an independent gaming device and systems test laboratory, to prepare draft regulations. According to the Broward County Administrator's office, GLI will also identify policy issues for the Board; prepare final regulations which include a comprehensive set or rules, regulations and internal control procedures; and provide an overview of actions and resources required for the County to regulate slots. The consultant will provide the Board with a set of draft regulations in early September.

TAB 2

CONSTITUTION
OF THE
STATE OF FLORIDA

ARTICLE X

MISCELLANEOUS

[1]SECTION 23. Slot machines.--

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

History.--Proposed by Initiative Petition filed with the Secretary of State May 28, 2002; adopted 2004.

[1]**Note.**--This section, originally designated section 19 by Amendment No. 4, 2004, proposed by Initiative Petition filed with the Secretary of State May 28, 2002, adopted 2004, was redesignated section 23 by the editors in order to avoid confusion with already existing section 19, relating to the high speed ground transportation system.

TAB 3

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
YELLOW HIGHLIGHTED AREAS ARE POSITIONS NOT AGREED TO BY HOUSE NEGOTIATORS			
Type Gaming Machine	Class II machines are technological aides to playing bingo; legislative intent to authorize only those established by agency or court in nonappealable final order	Language describes Class III machines; so-called "Vegas-style" machines	**Senate Position: Vegas-style machines**
Cash-in/Cash-out	Slot machine definition encompasses insertion of cash or coin and payment in cash, coin or tickets or credits to be exchanged for cash	Similar but some language differences	Senate Position on cash-in/cash-out
Number of Machines	Maximum of 3,000 per facility	No limit	**Senate Position: No limit on number of machines**
Slot Machine Revenue Definition	All cash and property received less cash, cash equivalents, credits, and prizes paid to winners	Same	Same
Payout	Payout no less than 85% and no more than 93%	No less than 85% per facility	Senate Position: no less than 85%
Tax Rate on Machine Revenue	55% of slot machine revenues	Variable revenue based: 30% up to $150M; 35% above $150M up to $300M; 40% on all above $300M	**Modified Senate Position: 35% of $125 M or less; 40% on greater than $125 M up to $250 M; 45% above $250 M up to $500 M; 55% above $500 M**
Laptop Computers	Provides that slot machine tax revenues must first be expended for a grant program administered by DOE available to all school districts and charter schools to provide laptop computers to 7th grade students. If student passes 10th grade FCAT the computers are upgraded and given to the student.	Not addressed	Senate Position: no ear-marking of funds deposited into EETF
Penalty for Failure to Pay Tax	$1,000 per day; if willful, grounds for suspension, revocation or non-renewal	Same	Same
Payment of Taxes	Requires corporations to apply for and be issued a certificate of status assuring existence and authorization for conducting business in the state; requires DOR certification to Governor of payment of all state and local taxes; subjects licensee to revocation, suspension or non-renewal for non-payment of taxes	Not addressed	Senate Position: revocation or suspension of license for non-payment of taxes covered in other provisions of bill
Trust Fund for Deposit of Tax on Slot Machine Revenue	Slot Machine Administrative TF for immediate transfer to EETF	Directly to PECO rather than first into Pari-mutuel Wagering TF for immediate transfer to PECO	Modified House Position: PMW TF for immediate transfer to EETF
Slot Machine License Holder Fee	$4M per licensed slot machine facility; requires evaluation of fees by Division in consultation with Board to determine optimal level for funding regulatory program	$4M per licensed slot machine facility for lst year only; thereafter, $1,000 per slot machine	House Position: $4 M annual license fee per facility rather than $4 M for first year and $1,000 per machine fe[illegible] thereafter

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SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Per Machine Fee/Tax	Not addressed	$500 per machine for Broward Co. School Board; expenditures for impacts not directly related to slot operations must be returned to EETF; also see license holder per machine fee applicable after the first year: $100 per machine fee to pay for compulsive gambling program	House Position: No per machine fee for Broward County School Board
Sales Tax Exemption	Slot machines made exempt from 4% sales tax applicable to coin operated amusement games	Not addressed	House Position: Exemption from 4% sales tax applicable to coin-operated amusement machines
Hours of Operation	From 10:00 AM until 2:00 AM daily - expressly provided can operate 365 days a year	16 hours per day daily - expressly provided can operate 365 days a year	Senate Position: 16 Hours per day but not limited to between 10:00 AM and 2:00 AM
Definition of Designated Slot Machine Gaming Area	Area of facility in which slot machine gaming may be conducted	Similar, but additional language including any addition, alteration or new structure on pari-mutuel premises	Senate Position: Slot gaming area not limited to existing structures on premises
Slot Facility Required Physical Connection to Live Pari-mutuel Gaming	Not addressed	Division establishes standards for physical layout and construction of facility including that slot machine gaming area must be connected and contiguous to live gaming facility	Senate Position: Requires slot gaming area to be connected and contiguous to pari-mutuel gaming facility
Pari-mutuel Wagering in Slots Area	Requires equipment to observe & wager on races & games in slots area	Similar language	Senate Position: Language for requiring equipment for observing and wagering on pari-mutuel events in slots area
Required Number of Live Events	Full schedule; the number of live events required may be reduced by the number that cannot be conducted due "Act of God" or other events beyond licensee's control; however, CS/HB 181 was amended in F&T on 4/12/05 to specify that a "full schedule" of live games for purposes of intertrack wagering for jai alai permitholders is a combination of at least 150 days of performances during the preceding year - [current law requires 100 performances]	Similar, however, does not contain "Act of God" provision; also, SB 342 companion to CS/HB 181 is traveling with one amendment that redefines a full-schedule as 40 performances for a non-slot jai alai permitholder; permitholders who are slots licensees still required to perform a full-schedule, i.e., 100 performances	Senate Position requiring conducting no fewer than the greater number of live races or games that were conducted at the facility in calendar year 2002 or 2003 with "Act of God" provision
Authority to Amend Annual License	Grants authority to amend pari-mutuel license [presumably to change number of days or specific days of operation] within 60 days of the effective date of the act in order to expedite the operation of slot machines	Same	Same
Bond Requirements	$2M bond for 1st year; then division determination of amount to ensure tax payments but no less than $2M	Similar but can adjust up or down	Senate Position: $2 M bond the first year; division may adjust for adequacy annually thereafter
ATMs & Financial Transactions	ATMs cannot be located within 50' of a designated slot machine gaming area; no third-party check cashing by licensee	ATMs not allowed to be located on the property of the facilities of the slot machine licensee	Senate Position: No ATMs anywhere on property of pari-mutuel or slots facility

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Near Win/Miss Programming	No programming to display a result that appears to be a near-win or gives the impression of getting close to a win by giving false impression that chance is improved by another play	Not addressed	House Position: No near win/miss programming
Manipulation and Tampering	Division or FDLE must have capacity using centralized system to suspend play if suspicion of manipulation or tampering	Not addressed	Modified House language to shut down particular affected machines or entire operating system if manipulation is of the entire system
Minors	Person under 21 cannot play, have access to, or be employed in designated slot machine gaming area	Same	Same
Alcoholic Beverage Sales	No complimentary alcohol; authorizes an alcoholic beverage license for designated gaming area [caterer's license]	Same	Same
Sign Posting (Odds, Compulsive Gaming Toll-Free Hotline)	Requires signs in designated slot machine gaming area re: warning of risks of gambling, odds of winning, and toll-free number for compulsive gambling	Same	Same
Compulsive Gambling Programs	Division may contract for prevention & treatment services with private provider; accountability standards required; make consult with DOL; funding from annual slot machine license fee	Same language regarding division contracting for prevention and treatment but also includes a $100 per machine fee to fund program. Bill contains provision not in HB requiring slot machine operator to offer employees training on responsible gaming working through treatment program in DCF.	Blended House/Senate position: Program limited to prevention; no $100 per machine fee to fund program; competitive bidding required for private provider contract for prevention services
Effective Date	1-Jul-05	Upon becoming law, except as otherwise expressly provided	Senate Position: Upon becoming law except as otherwise provided [Greyhound reporting takes effect July 1, 2005]
Statutory Purse Provisions	Not addressed	Not addressed	Not addressed
REGULATORY STRUCTURE			
Regulatory Agency	Creates a new Division of Slot Machines within the DBPR	Placed in Division of Pari-Mutuel Wagering within the DBPR	Senate Position: Division of Pari-Mutuel Wagering
Centralized System	Centralized computer management system for real-time auditing & financial purposes	Similar, but language differences	Senate Position: Use of Senate language for central system
Progressive Games	No linking of a licensee's operating system or machines to another licensee's operating system or machines	Progressive games defined but term not contained in substantive provisions of bill	Senate Position: Allows inter-facility progressive games
Occupational Licenses	Requires 3 types; general, professional & Business; up to $50 for general paid by facility; up to $1,000 for professional license; employees required to wear ID badges; extensive language relating to FDLE fingerprinting procedures and requirements	Similar, except for ID badges and extensive FDLE fingerprint procedures	Blended House/Senate Position: No requirement to wear ID badges in gaming area; FDLE fingerprint procedures specified
Powers & Duties	Authority for investigating, licensing, inspecting & tax collection	Similar authority for investigation, licensing, inspection & tax collection	Senate Position for powers and duties

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Division Rules for Licensure and Oversight	Rule-making authority for implementing substantive provisions of bill; no license issued until all rules filed for adoption with Sec. of State; changes in 5% or more of ownership interest must be approved ; licensees must provide detailed description of operating system including source codes; games and machines must be certified by independent testing lab; division review and approval of internal control procedures; records retention for 5 years with availability for audit & inspection by division, FDLE, and local law enforcement; required monthly reports by licensee; required filing of audit by licensee of all receipts and distributions of slot machine revenue by independent CPA	Similar rule-making authority for implementing substantive provisions of the bill but does not include numerous other provisions mentioned under HB description	Modified House position change of 5% or more in ownership interest requires approval by the division with an exception for publicly traded corporations on national stock exchanges; no requirement that *all* rules be filed prior to licensure. Senate position on no specific reference to source codes since it is believed that codes are available to the division under requirements for central control system
Regulatory and Law Enforcement Presence at Facility	Requires slot machine licensees provide adequate office space to division and FDLE	Not addressed	House Position: Licensee required to provide office space for division and FDLE
Exclusion of Persons by Division	Grants authority to Division to bar undesirable persons from slot machine area	Similar, but allows Division discretion to readmit previously barred person if found not adverse to public interest	Senate Position: Allows division discretion to readmit previously barred person
Emergency Rule-Making Authority	Authorizes emergency rules only after slot machine licenses have been issued	Authorizes emergency rules to expedite licensing process	Senate Position: Emergency rules to expedite licensing rather than authorizing emergency rules only after licensing
Trust Fund for Administration	Slot Machine Administrative Trust Fund; repository for $4M license holder fee; penalties for failure to pay tax; occupational license fees; and slot machine tax revenue for immediate transfer into EETF	Pari-mutuel Wagering Trust Fund; no similar language for receiving slot machine tax revenue for transfer to PECO	Blended House/Senate Position: PMW TF with technical language requiring deposit of slot machine tax revenues into Fund for immediate transfer into EETF
Preemption	Preemption of local regulation of operation and wagering at slot machine facilities	Not addressed	House Position: Preemption of local regulation
Specific Appropriation	Specific appropriations for: DBPR - $4.8 M recurring & 4M non-recurring-64 FTEs; FDLE - $2.6 M recurring and $1.8 non-recurring -57 FTEs; and Broward State Attorney's Office - $158,154 recurring and $24,498 non-recurring-10 FTEs; all funds and positions held in reserve for approval by Ex. Ofc of Gov and chair and v-chair of LBC	Same appropriation for DBPR & FDLE; however, appropriates $608,118 recurring for State Attorney, and $1M recurring for compulsive gambling.	Senate Position: No appropriation for 17th Circuit State Attorney for first year; $1 M appropriation for compulsive gambling prevention program from license fee; $13.2 for DBPR and FDLE held in reserve until approval by Gov. and LBC
MISCELLANEOUS			

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Security Plan	Requires submission of a security plan by licensee with floor plan, location of security cameras, and listing of security equipment to the Division; in the licensure sections of the bill requirement for detailed descriptions of internal control procedures and independent testing of games and computer operating system; and division access to source codes for each game and machine	Same language for submission of a security plan but does not include numerous other provisions mentioned in HB description	House Position but no specific references to source code availability, since they are believed to be available under provisions relating to central control system
Popular Name	Cites act as the "Keep The Promise Act of 2005"	Not addressed	Senate Position: No popular name
Capital Reinvestment by Licensees	Require a report by licensee to the Board for purposes of documenting continuing capital reinvestment for economic benefit of community; report to be considered in the 2008 program evaluation by OPPAGA and each year thereafter.	Provides intent language that each facility develop into tourist destination, provide sufficient parking & facilitate access to pari-mutuel portion of facility	Senate Position: Intent language regarding development of facility
Prohibited Relationships and Activities	Prohibits division employee or person acting on behalf of the division or the board from certain relationships with licensees or holding of interests in business of licensee. Prohibits manufacturers or distributors from financial tie-in or revenue sharing w/licensee; division employees and relatives living in same household cannot play any licensed facility; employees and relatives living in same household cannot play at facility where employed; no moonlighting by local law enforcement or regulatory agency employees with jurisdiction over slots premises if employment is in slots area or other slots operations. Other moonlighting at pari-mutuel facility not involving slots requires primary employer approval	Same, except does not include prohibitions against playing by division employees and facility employees	Blended House/Senate Position: No prohibition against playing by division or facility employees; no moonlighting by local law enforcement or regulatory agency employees with jurisdiction over slots premises if employment is in slots area or other slots operations. Other moonlighting at pari-mutuel facility not involving slots requires primary employer approval
Civil/Criminal Penalties for Certain Acts	Criminal penalties; adds slot machine crimes as underlying offense for RICO violations [racketeering]	Similar acts are prohibited and are specifically punished by administrative fine or civil penalties of between $10,000 and $25,000; specific criminal penalty for intentional tampering or manipulation of slot machine - 3rd degree felony	Blended House/Senate language includes underlying criminal offense of tampering & theft as RICO violations
Criminal Jurisdiction of Division and Local Authorities	Concurrent criminal law enforcement jurisdiction for division, FDLE, and local law enforcement; division, FDLE, and local law enforcement unrestricted access to facilities for inspections; rules of construction to assure FDLE and local law enforcement criminal jurisdiction, access to facility and records; criminal investigations in conjunction with state attorney	Similar language for authority of division; rules of construction for local law enforcement but FDLE enforcement not expressly addressed	House Position on authority of FDLE and local law enforcement

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Possession and Transportation of Gambling Devices	Exempts the transportation/shipment of slot machines into a county in the state where slot machine gambling is authorized from federal Johnson Act, provided the destination is to a licensed, eligible facility.	Not addressed	House Position on possession and transportation of gambling devices
Greyhound Welfare	Not addressed	Division required to maintain records and establish reporting requirements of greyhound injuries and the disposition of retired greyhounds	**Senate Position requiring reporting of greyhound injuries and disposition**
Hialeah Thoroughbred Permit	Preservation of Hialeah permit which is currently under revocation and in appellate litigation	Not addressed	**Senate Position: No language protecting the Hialeah permit from revocation and forfeiture to the state for not having operated during the last several seasons**
Tribal Compact	Requires ratification by Legislature of Governor negotiated compact for Indian gaming	Not addressed	House Position with additional language referencing to slot machines and other Class III gaming
Definitions Section of Bill	Slot machine licensee definition licenses permitholder	Slot Machine licensee definition similar but licenses facility; definitions for "Central Control Computer," "Distributor," "Eligible Facility," "Independent Testing," "Manufacturer," "Progressive System," "Slot Machine License," and "Slot Machine Operator" not addressed in HB.	Blended House/Senate use of definitions
SOCIO-ECONOMIC IMPACTS			
Advisory Board	9-member Board of Slot Machines housed in Division; members appointed by Governor & confirmed by Senate	Not addressed	Senate Position: No Board
Division Rules for Board and Keep-the-Promise Rules	Board recommends to Division rules providing the means, method and timing of reporting by licensee in specified areas; for example: detailed summary of lobbying activities by or on behalf of licensee, including amount and source of funds expended	Not addressed	Senate Position: No licensee reporting to Board
Preferences in Purchasing and Employment	Requires preference in employment to Florida residents; preference in regard to purchases made from Florida vendors; requires slot machine licensees to create opportunities to purchase from minority vendors; and the practice of nondiscriminatory employment practices for hiring various protected groups of persons	Not addressed	**House Position on preferences in purchasing and employment but requiring a written policy from licensee rather than absolute requirement**
Law Enforcement Affidavits	Local chief of law enforcement must verify by affidavit fiscal needs have been met; affidavits sent to Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No law enforcement affidavits

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
County & Municipality Resolutions	Local government resolutions by governing bodies of nearby jurisdictions that facility not harmful to community; resolutions sent to Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No local resolutions required
Tourist Development Council Resolutions	TDC resolutions required throughout state addressing impact on tourism within their jurisdiction; resolutions sent to the Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No Tourist Development Council resolutions required
Local Referenda	Provides for local county referenda de-authorizing slot machine gaming and also straw ballot referenda declaring slot machine gaming an undue burden	No similar language for de-authorization or straw ballots. However, language providing procedures for payment by licensees for referenda election to authorize slot machine gaming pursuant to constitution. Also provisions for licensee to be licensed before an authorizing referendum but not to actually operate slot machine gaming until approval pursuant to referendum.	**Senate Position: No express authorization for county deauthorization referenda or straw ballot provision. Authority for provisional licensing prior to a local authorizing referenda and authority for facility to pay local government for expenses related to referenda to authorize slot machine gaming**
DOT Study & Report	DOT Study of Access Routes to Pari-mutuel and Indian Slot Machine Gaming Facilities	Not addressed	Senate Position: No DOT Study
OPPAGA Program Evaluation	Evaluation consists of performance audit of Board & Division and performance of licensees; due date of first report to 1/1/08 and require annual updates	Not addressed	Modified House Position: OPPAGA study of Division and licensees
Shaded Rows Represent Identical Provisions			

TAB 4

Select Year: 2005 **Select Chamber:** House Go

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House 1901: Relating to Keep the Promise Act of 2005

H1901 GENERAL BILL/2ND ENG by Business Regulation (CC); Attkisson; (CO-SPONSORS) Zapata (Linked 1ST ENG/H 1903, 1ST ENG/H 1905, Compare H 1075, H 1569, H 1571, CS/CS/CS/S 1174, S 1342, S 2004, S 2122)
Keep the Promise Act of 2005; establishes Slot Machines Div. in DBPR; authorizes slot machines & slot machine gaming within certain pari-mutuel facilities located in Miami-Dade & Broward Counties upon approval by local referendum; prohibits licensees or any entity conducting business on or within licensed slot operation from employing employees of certain law enforcement or regulatory agencies, etc. Amends FS. APPROPRIATION: $18,092,579. EFFECTIVE DATE: 07/01/2005.

04/04/05 HOUSE Filed
04/05/05 HOUSE Introduced, referred to Commerce Council; Fiscal Council -HJ 00354, -HJ 00457
04/12/05 HOUSE On Council agenda-- Commerce Council, 04/14/05, 12:45 pm, 404-H
04/14/05 HOUSE Favorable with CS amendment by Commerce Council; YEAS 10 NAYS 0 -HJ 00564
04/17/05 HOUSE Pending review of CS under Rule 6.3(b); Now in Fiscal Council -HJ 00564
04/18/05 HOUSE On Council agenda-- Fiscal Council, 04/20/05, 3:45 pm, 212-K --Temporarily deferred
04/21/05 HOUSE On Council agenda-- Fiscal Council, 04/22/05, 1:30 pm, 212-K
04/22/05 HOUSE Favorable with CS amendment by- Fiscal Council; YEAS 18 NAYS 0 -HJ 00726
04/25/05 HOUSE Pending review of CS -under Rule 6.3(b); Placed on Calendar -HJ 00726
04/27/05 HOUSE Placed on Special Order Calendar; Read second time -HJ 00795; Amendment(s) adopted -HJ 00797; Amendment(s) failed -HJ 00798; Ordered engrossed -HJ 00800
04/28/05 HOUSE Temporarily postponed, on Third Reading -HJ 00998
05/02/05 HOUSE Read third time -HJ 01097; Amendment(s) adopted -HJ 01099; Passed as amended; YEAS 91 NAYS 24 -HJ 01099
05/02/05 SENATE In Messages
05/03/05 SENATE Received, referred to Regulated Industries; Judiciary; Ways and Means -SJ 00903
05/06/05 SENATE Withdrawn from Regulated Industries; Judiciary; Ways and Means -SJ 01559; Substituted for CS/CS/CS/SB 1174 -SJ 01560; Read second time -SJ 01559; Amendment(s) adopted -SJ 01560; Read third time -SJ 01569; Passed as amended; YEAS 28 NAYS 10 -SJ 01569; Died in Senate

Bill Text

Version:	Posted:	Format:
H 1901	04/03/2005	Web Page | PDF

A bill to be entitled

An act relating to pari-mutuel wagering; creating the Keep the Promise Act of 2005 to implement s. 23, Art. X of the State Constitution; providing for administration and regulation by the Division of Slot Machines of the Department of Business and Professional Regulation; amending s. 20.165, F.S.; establishing a Division of Slot Machines in the Department of Business and Professional Regulation; amending s. 550.5251, F.S.; revising licensing and permit requirements relating to required operating days for certain thoroughbred racing permitholders; revising timeframe for application of certain requirements; deleting requirement that certain thoroughbred permitholders operate the full number of days; providing for validity of certain permits; creating chapter 551, F.S.; implementing s. 23, Art. X of the State Constitution; authorizing slot machines and slot machine gaming within certain pari-mutuel facilities located in Miami-Dade and Broward Counties upon approval by local referendum; providing for administration and regulation by the Division of Slot Machines of the Department of Business and Professional Regulation; providing definitions; providing legislative intent; providing powers and duties of the division; providing for construction of such provisions; directing the division to adopt rules necessary to implement, administer, and regulate slot machine gaming; requiring such rules to include application procedures, certain technical

requirements, procedures relating to revenue, certain regulation and management and auditing procedures, certain bond requirements, and requirements for record maintenance, and payouts; providing for investigations by the division, the Department of Law Enforcement, and local law enforcement; providing for the investigation of violations in conjunction with other agencies; providing specified law enforcement powers to the division; providing for access to slot machine licensee facilities by the division, the Department of Law Enforcement, or local law enforcement; authorizing the division, the Department of Law Enforcement, or local law enforcement to make certain inspections and examinations; authorizing the division to collect certain monies and deny, revoke, suspend, or place conditions on the license under certain circumstances; providing for suspension or revocation of the license of an unqualified applicant or licensee; authorizing the division to adopt emergency rules for the regulation of slot machine gaming; providing for licensure to conduct slot machine gaming; prohibiting the division from accepting applications or issuing slot machine licenses prior to adoption of rules; providing for application for licensure; providing conditions for conducting slot machine gaming; providing requirements for receiving and maintaining a license which include compliance with slot machine regulations and regulations relating to pari-mutuel wagering, maintaining the pari-mutuel permit and license, conducting a certain number of

live races or games, allowing access by the division, and submission of security plans; requiring prior approval by the division of certain changes in ownership of slot machine licenses; requiring notice to the division of certain changes in ownership; requiring permitholders to submit certain information and certification relating to games to the division and the Department of Law Enforcement; requiring review and approval of games by division; requiring a slot machine licensee to submit internal control procedures to the division for review and approval; authorizing the amendment of a pari-mutuel license within a specified time; providing for a reduction in the required number of live races or games under certain circumstances; prohibiting transfer of a license; providing a limit on the number of slot machines at a facility; requiring slot machine licensees to maintain certain reports for submission to the division; providing for an audit by an independent certified public accountant of the receipt and distribution of slot machine revenues; providing for annual renewal of the license; providing for a renewal application and procedures for approval; requiring corporate slot machine licensees to apply for and be issued a certificate of status; specifying the payment of state and local taxes as a condition for a slot machine license; requiring certification by the Department of Revenue of the payment of certain state and local taxes by a slot machine licensee; directing the division to revoke, suspend, or refuse to renew the license for

failure to pay such taxes; requiring the slot machine licensee pay to the division an initial and annual license fee; providing for deposit of the fee into the Slot Machine Administrative Trust Fund for certain purposes; requiring the division to evaluate the license fee and make recommendations to the Legislature; providing for a tax on slot machine revenues to be deposited into the Educational Enhancement Trust Fund; requiring that slot machine taxes shall be used to supplement and not supplant public education dollars; requiring tax proceeds be first used to fund a grant program for laptop computers for certain students; directing the State Board of Education to adopt rules to implement such program; providing payment procedures; providing penalties for failure to make payments; providing for submission of funds by electronic funds transfer; providing for general, professional, and business occupational licenses; prohibiting transfer of such licenses; prohibiting a slot machine licensee from employing or doing business with persons or businesses unless such person or business is properly licensed; requiring occupational licensees to display identification cards under certain circumstances; providing for application forms, fees, and procedures; authorizing the division to adopt rules relating to applications, licensure, and renewal of licensure and fees therefor; requiring slot machine licensee to pay licensure fees of general occupational licensees; providing for reciprocal disciplinary actions with other jurisdictions;

providing for disciplinary actions against a licensee for certain violations of regulations or laws; requiring fingerprints and criminal records checks of applicants or licensees; requiring certain costs of the records check be borne by the applicant or licensee; requiring licensees to provide equipment for electronic submission of fingerprints; authorizing the retention of fingerprints for the purposes of entering fingerprints into the statewide automated fingerprint identification system by a certain date; requiring licensees to inform the division of conviction of disqualifying criminal offenses; requiring certain racetracks and frontons to pay an annual fee; authorizing the Department of Law Enforcement to adopt rules relating to fingerprinting costs and procedures; requiring periodic additional criminal history checks for purposes of screening following issuance of a license; providing for distribution of funds into the Slot Machine Administrative Trust Fund; prohibiting certain relationships between employees of the division or board and licensees of the division; prohibiting division employees and occupational licensees and certain of their relatives from wagering on slot machines at certain facilities; prohibiting contracts that provide for revenue sharing between a manufacturer or distributor and slot machine licensees; prohibiting ownership or financial interests in slot machine licensees by certain manufacturers or distributors; prohibiting licensees or any entity conducting business on or within a licensed

slot operation from employing employees of certain law enforcement or regulatory agencies; prohibiting certain false statements, exclusion of revenue for certain purposes, cheating, and theft of proceeds; providing penalties; providing for arrest and recovery; limiting liability for arrest and detention; providing penalties for resisting recovery efforts; authorizing manufacture, sale, distribution, possession, and operation of slot machines under certain circumstances; authorizing the division to exclude any person from licensed facilities under certain circumstances; directing the division to require certain signage in designated gaming areas and require certain equipment or facilities relating to races or games within the gaming area; requiring permitholder to provide office space; prohibiting a licensee and employees and agents of the licensee from allowing a person under a certain age to operate slot machines or to have access to the gaming area; prohibiting complimentary alcoholic beverages, loans or credit, acceptance or cashing of third-party checks, and automatic teller machines; authorizing the suspension of play of slot machines by the division or the Department of Law Enforcement for suspicion of tampering or manipulation; limiting linkage of operating systems; prohibiting certain player enticements; providing for the hours of operation of slot machines; providing that the slot machine licensee is eligible for a caterer license under specified provisions; requiring the slot machine licensee maintain certain

purchasing and hiring policies, use a certain job listing service provided by the Agency for Workforce Innovation, and implement certain equal employment opportunities; providing penalties for certain violations by a licensee; providing for deposit of fines collected; creating the State Slot Machine Gaming Board within the division; providing that the board is not a state entity; providing for public meetings and records of the board; providing for offices and personnel of the board; requiring the board comply with specified ethics provisions; providing for expenditures of state funds derived from regulatory fees; requiring the division provide administrative support for the board; providing purpose of the board; providing for membership of the board; providing for appointment and confirmation and terms of members; requiring financial disclosure; prohibiting interests in any slot machine licensee or the gambling industry; providing that members are state officers for specified purposes; authorizing per diem and travel expenses; providing for removal of members; providing for organization and meetings of the board; providing powers and duties of the board; authorizing the board to receive certain information and testimony; providing for evaluations, recommendations, and reports; directing the division to provide the board with certain proposed rules for review and response; requiring the board to prepare an annual report to be submitted to the Governor and Legislature; providing for content of the report;

directing the Office of Program Policy Analysis and Government Accountability to conduct an annual performance audit of the board, the division, and slot machine licensees; providing for content of the audit; directing that office to submit the audit's findings and recommendations to the Governor and the Legislature; requiring the chief law enforcement officer of certain counties and municipalities to annually execute and transmit to the board an affidavit relating to certain funding; requiring the governing body of certain counties and municipalities and tourist development councils to annually adopt and transmit to the board a resolution relating to the operations of slot machine gaming; authorizing other governing bodies to transmit such a resolution to the board; authorizing the division to contract for a compulsive gambling treatment and prevention program; amending s. 849.15, F.S.; providing for transportation of certain gaming devices in accordance with federal law; amending s. 895.02, F.S.; providing that specified violations related to slot machine gaming constitute racketeering activity; providing that certain debt incurred in violation of specified provisions relating to slot machine gaming constitutes unlawful debt; preempting slot machine regulation to the state; providing for referenda deauthorizing slot machine operations as an undue burden; authorizing referenda declaring slot machine operations an undue burden; requiring a petition for a referendum; providing for ratification of tribal-state

compacts by the Legislature; directing the Department of Transportation to conduct a study on the access roads to pari-mutuel facilities and Indian reservation lands where gaming activities occur; providing for content of the study; requiring a report to the Governor and the Legislature; providing appropriations for the Department of Business and Professional Regulation, the Department of Law Enforcement, and the Office of the State Attorney to carry out the provisions of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Keep The Promise Act of 2005."

Section 2. Subsection (2) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(2) The following divisions of the Department of Business and Professional Regulation are established:

(a) Division of Administration.

(b) Division of Alcoholic Beverages and Tobacco.

(c) Division of Certified Public Accounting.

1. The director of the division shall be appointed by the secretary of the department, subject to approval by a majority of the Board of Accountancy.

2. The offices of the division shall be located in Gainesville.

(d) Division of Florida Land Sales, Condominiums, and Mobile Homes.

(e) Division of Hotels and Restaurants.

(f) Division of Pari-mutuel Wagering.

(g) Division of Professions.

(h) Division of Real Estate.

1. The director of the division shall be appointed by the secretary of the department, subject to approval by a majority of the Florida Real Estate Commission.

2. The offices of the division shall be located in Orlando.

(i) Division of Regulation.

(j) Division of Slot Machines.

(k) Division of Technology, Licensure, and Testing.

Section 3. Subsections (1), (2), and (3) of section 550.5251, Florida Statutes, are amended to read:

550.5251 Florida thoroughbred racing; certain permits; operating days.--

(1) Each thoroughbred permitholder under whose permit thoroughbred racing was conducted in this state at any time between January 1, 1987, and January 1, 2005 ~~1988~~, shall annually be entitled to apply for and annually receive thoroughbred racing days and dates as set forth in this section. As regards such permitholders, the annual thoroughbred racing season shall be from June 1 of any year through May 31 of the

following year and shall be known as the "Florida Thoroughbred Racing Season."

(2) Each permitholder referred to in subsection (1) shall annually, during the period commencing December 15 of each year and ending January 4 of the following year, file in writing with the division its application to conduct one or more thoroughbred racing meetings during the thoroughbred racing season commencing on the following June 1. Each application shall specify the number and dates of all performances that the permitholder intends to conduct during that thoroughbred racing season. On or before February 15 of each year, the division shall issue a license authorizing each permitholder to conduct performances on the dates specified in its application. Up to March 31 of each year, each permitholder may request and shall be granted changes in its authorized performances~~; but thereafter, as a condition precedent to the validity of its license and its right to retain its permit, each permitholder must operate the full number of days authorized on each of the dates set forth in its license~~.

(3) Each thoroughbred permit referred to in subsection (1), including, but not limited to, any permit originally issued as a summer thoroughbred horse racing permit, is hereby validated and shall continue in full force and effect, irrespective of any action that the division may take or may have heretofore taken against the permit.

Section 4. Chapter 551, Florida Statutes, consisting of sections 551.101, 551.103, 551.105, 551.107, 551.1073, 551.1075 551.108, 551.1091, 551.1111, 551.1113, 551.1115, 551.1119,

551.121, 551.125, 551.20, 551.202, 551.204, 551.25, 551.30, 551.33, 551.34, 551.341, and 551.40, is created to read:

CHAPTER 551

SLOT MACHINES

551.101 Slot machine gaming authorized.--Any existing, licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 may possess slot machines and conduct slot machine gaming at the location where the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law provided a majority of voters in a countywide referendum have approved the possession of slot machines at such facility in the respective county. Notwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess slot machines and conduct slot machine gaming.

551.103 Definitions.--As used in this chapter, unless the context clearly requires otherwise, the term:

(1) "Board" means the State Slot Machine Gaming Board.

(2) "Department" means the Department of Business and Professional Regulation.

(3) "Designated slot machine gaming area" means the area of a facility of a slot machine licensee in which slot machine gaming may be conducted in accordance with the provisions of this chapter.

(4) "Division" means the Division of Slot Machines of the Department of Business and Professional Regulation.

(5) "Electronic or electromechanical facsimile" means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

(6) "Mechanical, electronic, computerized, or other technological aids" means any machine or device that assists a player or the playing of a bingo game as defined in s. 849.0931 and broadens participation by allowing multiple players at one slot machine facility to play with or against each other in a bingo game for a common prize or prizes. Such aids may use alternative displays, including, but not limited to, a simulation of spinning reels, to illustrate aspects of the game of bingo such as when a player joins the game or when prizes have been awarded, as long as such aid continuously and prominently displays the electronic bingo card so that it is apparent that the player is actually engaged in the play of bingo. Such aids shall not:

(a) Determine or change the outcome of any game of bingo;

(b) Be an electronic or electromechanical facsimile that replicates a game of bingo; or

(c) Allow players to play with or against the machine or house for a prize.

(7) "Slot machine" means a mechanical, electronic, computerized gaming device that is a technological aid to the playing of the game of bingo and that offers wagering on the game of bingo as defined in s. 849.0931, is owned by the slot machine licensee, and is capable of being linked to a centralized computer management system for regulating, managing, and auditing the operation, financial data, and program information, as required by the division. A slot machine may be activated by insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card and may entitle the person playing or operating the machine to receive or may deliver to the person cash, billets, tickets, tokens, or electronic credits to be exchanged for cash. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24), and slot machines are not subject to the tax imposed by s. 212.05(1)(h). It is the intent of the Legislature to authorize only those mechanical, computerized, electronic or other technological aids that a federal agency or a court in a final, nonappealable order has concluded expressly meet the definition of a mechanical, computerized, electronic, or other technological aid to Class II gaming pursuant to 25 U.S.C. 2703, the Indian Gaming Regulatory Act. The Legislature does not intend to authorize any other gaming device.

(8) "Slot machine licensee" means a pari-mutuel permitholder who holds a license issued by the division pursuant to this chapter which authorizes such person to possess a slot

machine within facilities specified in s. 23, Art. X of the State Constitution and allows slot machine gaming.

(9) "Slot machine revenues" means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

551.105 Division of Slot Machines; powers and duties.--

(1) The division shall adopt, pursuant to the provisions of ss. 120.536 and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules shall include:

(a) Procedures for applying for a license and renewal of a license.

(b) Establishing technical requirements in addition to the qualifications which shall be necessary to receive a slot machine license or slot machine occupational license.

(c) Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this chapter.

(d) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machines through a centralized computer system that shall allow the division and the Florida Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee, as required by the division or the Florida Department of Law Enforcement and shall provide the division and the Florida Department of Law Enforcement with the

ability to monitor on a real-time basis at any time wagering patterns, payouts, tax collection, and compliance with any rules adopted by the division for the regulation and control of slot machines operated under this section. Such continuous and complete access on a real-time basis at any time shall include the ability to immediately suspend slot machine operations if monitoring of the computer operating system indicates possible tampering or manipulation of slot machines or of the computer operating system itself.

(e) Requiring each licensee at his or her own cost and expense to supply the division with a bond with the penal sum of $2 million payable to the Governor and his or her successors in office for the licensee's first year of slot machine operations; and, thereafter, the licensee shall file a bond with the penal sum as determined by the division pursuant to rules promulgated to approximate anticipated state revenues from the licensee's slot machine operations, but in no case shall the bond be less than $2 million. Any bond shall be issued by a surety or sureties to be approved by the division and the Chief Financial Officer, conditioned to faithfully make the payments to the Chief Financial Officer in his or her capacity as treasurer of the division. The licensee shall be required to keep its books and records and make reports as provided in this chapter and to conduct its slot machine operations in conformity with this chapter and all other provisions of law. The division may review the bond for adequacy and require adjustments each fiscal year. Such bond shall be separate and distinct from the bond required in s. 550.125.

(f) Requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records, required by this chapter or determined by the division to be necessary to the proper implementation and enforcement of this chapter.

(g) Requiring that the payout percentage of a slot machine shall be no less than 85 percent or more than 93 percent per facility.

(2) The division shall conduct such investigations that the division determines necessary to fulfill its responsibilities under the provisions of this chapter.

(3) The division, the Department of Law Enforcement, and local law enforcement agencies shall have concurrent jurisdiction to investigate criminal violations of this chapter and may investigate any other criminal violation of law occurring on the facilities of a slot machine licensee, and such investigations may be conducted in conjunction with the appropriate state attorney. The division and its employees and agents shall have such other law enforcement powers as specified in ss. 943.04 and 943.10.

(4)(a) The division, the Department of Law Enforcement, and local law enforcement agencies shall have unrestricted access to the slot machine licensee facility at all times and shall require of each slot machine licensee strict compliance with the laws of this state relating to the transaction of such business. The division, the Department of Law Enforcement, and local law enforcement agencies:

1. May inspect and examine premises where slot machines are offered for play.

2. May inspect slot machines and related equipment and supplies.

(b) In addition, the division:

1. May collect taxes, assessments, fees, and penalties.

2. May deny, revoke, suspend, or place conditions on the license of a person who violates any provision of this chapter or rule adopted pursuant thereto.

(5) The division shall revoke or suspend the license of any person who is no longer qualified or who is found, after receiving a license, to have been unqualified at the time of application for the license.

(6) Nothing in this section shall be construed to:

(a) Prohibit the Department of Law Enforcement or any law enforcement authority whose jurisdiction includes a slot machine licensee facility from conducting criminal investigations occurring on the facilities of the slot machine licensee;

(b) Restrict access to the slot machine licensee facility by the Department of Law Enforcement or any local law enforcement authority whose jurisdiction includes the slot machine licensee facility; or

(c) Restrict access to information and records necessary to the investigation of criminal activity that is contained within the slot machine licensee facility by the Department of Law Enforcement or local law enforcement authorities.

(7) The division may, at any time after the issuance of a license pursuant to s. 551.107, adopt emergency rules pursuant

to s. 120.54. The Legislature finds that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The Legislature further finds that the unique nature of legalized gambling requires, from time to time, that the division respond as quickly as is practicable to changes in the marketplace and changes in technology that may affect legalized gambling conducted at pari-mutuel facilities in this state. Therefore, in adopting such emergency rules, the division need not make the findings required by s. 120.54(4)(a). Emergency rules adopted to implement the provisions of this chapter are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by other emergency rules or by rules adopted under nonemergency rulemaking procedures of chapter 120.

551.107 License to conduct slot machine gaming.--

(1) Upon application and a finding by the division after investigation that the application is complete and the applicant is qualified, and payment of the initial license fee the division shall issue a license to conduct slot machine gaming in the designated slot machine gaming area of the slot machine licensee's facility. Once licensed, slot machine gaming may be conducted subject to the requirements of this chapter and rules adopted pursuant thereto. The division shall not be authorized to accept an application or issue a license to operate slot machine gaming at a pari-mutuel wagering facility until such time as all rules mandated by this chapter for slot machine operations have been filed for adoption with the Secretary of State.

(2) An application may be approved by the division only after the voters of the county where the applicant's facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county as specified in s. 23, Art. X of the State Constitution.

(3) A slot machine license may only be issued to a licensed pari-mutuel permitholder and slot machine gaming may only be conducted at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities.

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming the slot machine licensee shall:

(a) Continue to be in compliance with this chapter.

(b) Continue to be in compliance with chapter 550, where applicable, and maintain the pari-mutuel permit and license in good standing pursuant to the provisions of chapter 550. Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility shall be entitled within 60 days after the effective date of this act to amend its 2005-2006 license issued by the Division of Pari-mutuel Wagering and shall be granted the requested changes in its authorized performances pursuant to such amendment. The Division of Pari-mutuel Wagering shall issue a new license to the eligible facility to effectuate an amendment.

(c) Conduct not less than a full schedule of live races or games as defined in s. 550.002(11). However, when a permitholder

fails to conduct such number of live races or games, that number of live races or games shall be reduced by the number of races or games which could not be conducted due to the direct result of fire, war, or other disaster or event beyond the ability of the permitholder to control.

(d) Upon approval of any changes relating to the pari-mutuel permit by the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation, be responsible for providing appropriate current and accurate documentation on a timely basis to the division in order to continue the slot machine license in good standing. Changes in ownership or interest of a slot machine gaming license of 5 percent or more of the stock or other evidence of ownership or equity in the slot machine license or any parent corporation or other business entity that in any way owns or controls the slot machine license shall be approved by the division prior to such change, unless the owner is an existing holder of that license who was previously approved by the division. Changes in ownership or interest of a slot machine license of less than 5 percent shall be reported to the division within 20 days after the change. The division may then conduct an investigation to ensure that the license is properly updated to show the change in ownership or interest.

(e) Allow unrestricted access and right of inspection by the division to facilities of a slot machine licensee in which any activity relative to the conduct of slot machine gaming is conducted.

(f) Submit a security plan, including a slot machine floor plan, location of security cameras, and the listing of security equipment which shall be capable of observing and electronically recording activities being conducted in the designated slot machine gaming area.

(g) Provide the division with a detailed operating system description, including, but not limited to, any operating software, access to the source codes for each game and slot machine it will offer for play at its slot machine facility, and certification by an independent testing laboratory that the games, slot machines, and computer operating system conform to the requirements of this chapter. Such descriptions shall also be made available to the Department of Law Enforcement. The division shall review and approve each game and machine for compliance with this chapter and rules regulating games and slot machines prior to approval of the game and machine. A slot machine licensee shall not operate any game or machine prior to its approval for use in its facility by the division.

(h) Provide the division with a complete copy of internal control procedures adopted by the licensee for its slot machine operations. The division shall review and approve such internal control procedures for compliance with rules adopted to ensure patron safety, payout procedures, and security of tax revenues to be paid to the state. Rules regarding requirements for the internal control procedures shall include, but not be limited to, audit and tax collection procedures, security procedures for the collection of money for vouchers issued for slot machines, and security and public safety procedures.

(5) A slot machine license shall not be transferable.

(6) A slot machine licensee may make available for play up to 3,000 slot machines within its designated slot machine gaming areas.

(7) A slot machine licensee shall keep and maintain permanent daily records of its slot machine operation and shall maintain such records for a period of not less than 5 years. These records shall include all financial transactions and contain sufficient detail to determine compliance with the requirements of this section. All records shall be available for audit and inspection by the division, the Department of Law Enforcement, or other law enforcement agencies during the licensee's regular business hours. The information required in such records shall be determined by division rule.

(8) A slot machine licensee shall file with the division a report containing the required records of such slot machine operation. A slot machine licensee shall file such report monthly. The required reports shall be submitted on forms prescribed by the division and shall be due at the same time as the monthly pari-mutuel reports are due to the Division of Pari-mutuel Wagering, and the reports shall be deemed public records once filed.

(9) A slot machine licensee shall file with the division an audit of the receipt and distribution of all slot machine revenues provided by an independent certified public accountant verifying compliance with all statutes and regulations imposed by this chapter and the rules promulgated hereunder. The audit shall include verification of compliance with all statutes and

regulations regarding all required records of slot machine operations. Such audit shall be filed within 60 days after the completion of the permitholder's pari-mutuel meet.

(10) The division may share any information with the Department of Law Enforcement or any other law enforcement agency having jurisdiction over slot machine gaming or pari-mutuel activities. Any law enforcement agency having jurisdiction over slot machine gaming or pari-mutuel activities may share any information obtained or developed by it with the division.

551.1073 Slot machine license renewal.--

(1) Slot machine licenses shall be renewed annually. The application for renewal shall contain all revisions to the information submitted in the prior year's application that are necessary to maintain such information as both accurate and current.

(2) The applicant for renewal shall attest that any information changes do not affect the applicant's qualifications for license renewal.

(3) The applicant shall submit information required by ss. 551.30 and be in compliance with rules adopted by the division.

(4) Upon determination by the division that the application for renewal is complete and qualifications have been met, including payment of the renewal fee, the slot machine license shall be renewed annually.

551.1075 Payment of taxes; determination and certification of payment of state and local taxes.--

(1) Any domestic or foreign corporation holding a slot machine license must have applied for and been issued a certificate of status by the Department of State evidencing conclusively that the corporation is in existence and authorized to do business in this state.

(2) As a condition for license renewal and for continuation of a license in good standing, the division may determine whether the slot machine licensee has failed to pay all taxes due to the division as a result of the licensee's pari-mutuel and slot machine gaming operations. If the division determines that the slot machine licensee is delinquent in the payment of any such tax, it shall revoke, suspend, or refuse to renew the license of the slot machine licensee.

(3) On or before July 31 of each fiscal year, the Department of Revenue shall certify to the Governor that a corporation or other business entity or an individual holding a slot machine license is current and in good standing in regard to the payment of all state or local taxes due and payable to the Department of Revenue or to an applicable local jurisdiction for the prior fiscal year. If the Department of Revenue does not certify that a licensee is current and in good standing, the division shall revoke, suspend, or refuse to renew the license of a slot machine licensee.

551.108 License fee; tax rate.--

(1) LICENSE FEE.--

(a) Upon approval of the application for a slot machine license, the licensee must pay to the division a license fee of $4 million. The license fee shall be paid annually upon renewal

of the slot machine license and shall be deposited into the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation for the regulation of slot machine gaming under this chapter.

(b) Prior to January 1, 2006, the division shall evaluate the license fee and, in consultation with the board, shall make recommendations to the President of the Senate and the Speaker of the House of Representatives. The recommendations shall focus on the optimum level of slot machine license fees or a combination of fees in order to properly support the slot machine regulatory program.

(2) TAX ON SLOT MACHINE REVENUES.--

(a) The tax rate on slot machine revenues at each facility shall be 55 percent.

(b) The facility shall collect and transmit the tax to the department on a daily basis for deposit into the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation for immediate transfer to the Educational Enhancement Trust Fund in the Department of Education. Any interest earnings on the tax revenues shall also be transferred to the Educational Enhancement Trust Fund.

(c) Any expenditures of slot machine taxes shall be used to supplement and not supplant public education dollars. Tax proceeds shall be used first to fund the Laptops for Achievers grant program, which shall be administered by the Department of Education. All school districts are eligible to submit grant applications to participate in the program, in a format to be determined by the department. Each district's grant program

shall provide for the laptops to be made available to every public school seventh grade student, including charter school students, and shall require:

1. Integrated use of the laptops with curriculum design, instructional planning, training, and delivery, and communication with parents;

2. School site wiring and appropriate technology infrastructure needs;

3. Assignment of a laptop computer on loan to each student entering seventh grade for use through grade 12;

4. A contract with each student stipulating that if the student earns a passing score on the grade 10 FCAT, as required by ss. 1003.43(5) and 1003.429, the loaned laptop will be upgraded and given to the student to keep as a reward for the student's achievement.

The State Board of Education shall adopt rules to implement the Laptops for Achievers program.

(3) PAYMENT PROCEDURES.--Tax payments shall be remitted daily, as determined by rule of the division. The slot machine licensee shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month that shall show all slot machine activities for the preceding calendar month and such other information as may be required by the division.

(4) FAILURE TO PAY TAX; PENALTIES.--A slot machine licensee who fails to make tax payments as required under this section shall be subject to an administrative penalty of up to

$1,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected shall be deposited into the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation. If any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may suspend, revoke, or refuse to renew the license of the slot machine licensee.

(5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR REFUSE TO RENEW THE LICENSE.--In addition to the penalties imposed under subsection (4), any willful or wanton failure by a slot machine licensee to make payments of the tax constitutes sufficient grounds for the division to suspend, revoke, or refuse to renew the license of the slot machine licensee.

(6) SUBMISSION OF FUNDS.--The division may require slot machine licensees to remit taxes, fees, fines, and assessments by electronic funds transfer.

551.1091 Occupational license required; application; fee.--

(1) The individuals and entities that are licensed under this section require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a criminal records check.

(2)(a) The following licenses shall be issued to persons or entities with access to the designated slot machine gaming area or to persons who, by virtue of the position they hold,

might be granted access to these areas or to any other person or entity in one of the following categories.

1. General occupational licenses for general employees, food service, maintenance, and other similar service and support employees with access to the designated slot machine gaming area. Service and support employees with a current pari-mutuel occupational license issued pursuant to chapter 550 and a current background check are not required to submit to an additional background check for a slot machine occupational license as long as the pari-mutuel occupational license remains in good standing.

2. Professional occupational licenses for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, floor supervisor, security personnel, or any other similar position of oversight of gaming operations.

3. Business occupational licenses for any slot machine management company or slot machine business associated with slot machine gaming or a person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees or any person not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.

(b) Slot machine occupational licenses are not transferable.

(3) A slot machine licensee shall not employ or otherwise allow a person to work at a slot machine facility unless such person holds a valid occupational license. A slot machine licensee shall not contract or otherwise do business with a business required to hold a slot machine occupational license unless the business holds such a license. A slot machine licensee shall not employ or otherwise allow a person to work in a supervisory or management professional level at a slot machine facility unless such person holds a valid occupational license. All slot machine occupational licensees, while present in the slot machine gaming area, shall be required to display on their persons their occupational license identification cards.

(4)(a) A person seeking a slot machine occupational license, or renewal thereof, shall make application on forms prescribed by the division and include payment of the appropriate application fee. Initial and renewal applications for slot machine occupational licenses shall contain all the information the division, by rule, may determine is required to ensure eligibility.

(b) The division shall establish, by rule, a schedule for the annual renewal of slot machine occupational licenses.

(c) Pursuant to rules adopted by the division, any person may apply for and, if qualified, be issued an occupational license valid for a period of 3 years upon payment of the full occupational license fee for each of the 3 years for which the license is issued. The occupational license shall be valid during its specified term at any slot machine facility where slot machine gaming is authorized to be conducted.

(d) The slot machine occupational license fee for initial application and annual renewal shall be determined by rule of the division but shall not exceed $50 for a general or professional occupational license for an employee of the slot machine licensee or $1,000 for a business occupational license for nonemployees of the licensee providing goods or services to the slot machine licensee. License fees for general occupational licensees shall be paid for by the slot machine licensee. Failure to pay the required fee shall be grounds for disciplinary action by the division against the slot machine license but shall not be considered a violation of this chapter or rules of the division by the general occupational licensee or a prohibition against the issuance of the initial or the renewal of the general occupational license.

(5) If the state gaming commission or other similar regulatory authority of another state or jurisdiction extends to the division reciprocal courtesy to maintain disciplinary control, the division may:

(a) Deny an application for or revoke, suspend, or place conditions or restrictions on a license of a person or entity who has been refused a license by any other state gaming commission or similar authority; or

(b) Deny an application for or suspend or place conditions on a license of any person or entity who is under suspension or has unpaid fines in another jurisdiction.

(6)(a) The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or

the rules of the division governing the conduct of persons connected with slot machine gaming. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character, or has had a slot machine gaming license revoked by this state or any other jurisdiction for an offense related to slot machine gaming.

(b) The division may deny, declare ineligible, or revoke any occupational license if the applicant for such license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking as contemplated in s. 849.25.

(7) Fingerprints for all slot machine occupational license applications shall be taken in a manner approved by the division and shall be submitted to the Department of Law Enforcement and the Federal Bureau of Investigation for a level II criminal records check upon initial application and every 5 years thereafter. All persons associated with, having a direct or indirect ownership interest in, or employed by or working within a licensed premise, excluding division employees and law

enforcement officers assigned by their employing agencies to work within the premises as part of their official duties, are required to not be convicted of any disqualifying criminal offenses as established by division rule. To facilitate the required review of criminal history information, each person listed here is required to submit fingerprints to the division. The division shall forward the fingerprints to the Department of Law Enforcement for state processing. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(a) Fingerprints shall be taken in a manner approved by the division and shall be submitted electronically to the Department of Law Enforcement and the Federal Bureau of Investigation for a criminal records check upon initial taking, or as required thereafter by rule of the division, and every 5 years thereafter. Licensees are required to provide necessary equipment approved by the Department of Law Enforcement to facilitate such electronic submission. The division may by rule require annual criminal history record checks of all persons required to submit to the fingerprint-based criminal records check. The division requirements under this subsection shall be instituted in consultation with the Department of Law Enforcement.

(b) The cost of processing fingerprints and conducting a records check shall be borne by the licensee or the person being checked. The Department of Law Enforcement may invoice the division for the fingerprints submitted each month.

(c) Beginning February 1, 2006, all fingerprints submitted to the Department of Law Enforcement and required by this section shall be retained by the Department of Law Enforcement in a manner provided by rule of the Department of Law Enforcement and entered into the statewide automated fingerprint identification system as authorized by s. 943.05(2)(b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system pursuant to s. 943.051.

(d) Beginning February 1, 2006, the Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (c). Any arrest record that is identified with the retained fingerprints of a person subject to the criminal history screening requirements of this section shall be reported to the division. Each racetrack or fronton is required to participate in this search process by payment of an annual fee to the division which shall forward the payment to the Department of Law Enforcement. The division shall inform the Department of Law Enforcement of any change in the license status of licensees whose fingerprints are retained under subparagraph (c). The amount of the annual fee to be imposed upon each racetrack or fronton for performing these searches and the procedures for the retention of licensee fingerprints and the dissemination of search results shall be established by rule of the Department of

Law Enforcement. The fee shall be borne by the person fingerprinted or the licensee.

(e) Every 5 years following issuance of a license or upon conducting a criminal history check as required herein, each person who is so licensed or who was so checked must meet the screening requirements as established by the division rule, at which time the division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a criminal records check. If, for any reason following initial licensure or criminal history check, the fingerprints of a person who is licensed or who was checked are not retained by the Department of Law Enforcement as provided in this section, the person must file a complete set of fingerprints with the division. Upon submission of fingerprints for this purpose, the division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a criminal records check, and the fingerprints shall be retained by the Department of Law Enforcement as authorized herein. The cost of the state and national criminal history check required herein shall be borne by the licensee or the person fingerprinted. Under penalty of perjury, each person who is licensed or who is checked as required by this section must agree to inform the division within 48 hours if he or she is convicted of any disqualifying offense while he or she is so licensed.

(8) All moneys collected pursuant to this section shall be deposited into the Slot Machine Administrative Trust Fund.

551.1111 Prohibited relationships.--

(1) A person employed by or performing any function on behalf of the division or the board shall not:

(a) Be an officer, director, owner, or employee of any person or entity licensed by the division.

(b) Have or hold any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

(2) No employee of the division or relative living in the same household of such employee of the division shall be allowed to wager at any time on a slot machine located at a facility licensed by the division.

(3) No occupational licensee or relative living in the same household of such occupational licensee shall be allowed to wager at any time on a slot machine located at a facility where that person is employed.

(4) A manufacturer or distributor of slot machines shall not enter into any contract with a slot machine licensee that provides for any revenue sharing of any kind or nature that is, directly or indirectly, calculated on the basis of a percentage of slot machine revenues. Any maneuver, shift, or device whereby this provision is violated shall be a violation of this chapter and shall render any such agreement void.

(5) A manufacturer or distributor of slot machines or any equipment necessary for the operation of slot machines or an officer, director, or employee of any such manufacturer or distributor shall not have any ownership or financial interest in a slot machine license or in any business owned by the slot machine licensee.

(6) No licensee or any entity conducting business on or within a licensed slot operation shall employ any employee of a law enforcement or regulatory agency that has jurisdiction over the licensed premises in an off-duty or secondary employment capacity for work within any enclosure or area containing a slot machine or in any restricted area that supports slot machine operations that requires an occupational license to enter. If approved by the employee's primary employing agency, off-duty or secondary employment not prohibited by this section may be permitted.

551.1113 False statements; skimming of slot machine proceeds; cheating; theft; arrest and recovery; penalties.--

(1) Any person who intentionally makes or causes to be made or aids, assists, or procures another to make a false statement in any report, disclosure, application, or any other document required under this chapter or any rule adopted under this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who intentionally excludes, or takes any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine activity or any person who by trick or sleight of hand performance, or by a fraud or fraudulent scheme, or device, for himself or herself or for another, wins or attempts to win money or property or a combination thereof or reduces a losing wager or attempts to reduce a losing wager in connection with slot machine gaming commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or. 775.084.

(a) Any law enforcement officer or slot machine operator who has probable cause to believe that a violation of this subsection has been committed by a person and that the officer or operator can recover the lost proceeds from such activity by taking the person into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the person into custody on the premises and detain the person in a reasonable manner and for a reasonable period of time. If the operator takes the person into custody, a law enforcement officer shall be called to the scene immediately. The taking into custody and detention by a law enforcement officer or slot machine operator, if done in compliance with this subsection, does not render such law enforcement officer or slot machine operator criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(b) Any law enforcement officer may arrest, either on or off the premises and without warrant, any person if there is probable cause to believe that person has violated this subsection.

(c) Any person who resists the reasonable effort of a law enforcement officer or slot machine operator to recover the lost slot machine proceeds that the law enforcement officer or slot machine operator had probable cause to believe had been stolen from the eligible facility, and who is subsequently found to be guilty of violating this subsection, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless such person did not know or did not have reason to know that the person seeking to recover the lost proceeds was

a law enforcement officer or slot machine operator. For purposes of this section, the charge of theft and the charge of resisting apprehension may be tried concurrently.

(d) Theft of any slot machine proceeds or of property belonging to the slot machine operator or eligible facility by an employee of the operator or facility or by an employee of a person, firm, or entity that has contracted to provide services to the establishment constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

551.1115 Slot machines; authorization.--Notwithstanding any provision of law to the contrary, no slot machine manufactured, sold, distributed, possessed, or operated according to the provisions of this chapter shall be considered unlawful.

551.1119 Facilities of slot machine licensees.--

(1) In addition to the power to exclude certain persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any facility of a slot machine licensee any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or gaming facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over the gaming in such other state.

(2) This section shall not be construed to abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

(3) The division shall require the posting of signs in the designated slot machine gaming areas warning of the risks and dangers of gambling, showing the odds of winning, and informing patrons of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling.

(4) The division shall require slot machine licensees to provide in the designated slot machine gaming area facilities and equipment sufficient to allow the observation of and wagering on live, intertrack, and simulcast races and games.

(5) The permitholder shall provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machines operations. The division shall promulgate rules setting the criteria for adequate space, configuration, and location and needed electronic and technological requirements for office space required by this subsection.

551.121 Minors prohibited from playing slot machines.--

(1) A slot machine licensee or agent or employee of a slot machine licensee shall not:

(a) Allow a person who has not attained 21 years of age to play any slot machine.

(b) Allow a person who has not attained 21 years of age access to the designated slot machine gaming area of a facility of a slot machine licensee.

(c) Allow a person who has not attained 21 years of age to be employed in any position allowing or requiring access to the designated slot machine gaming area of a facility of a slot machine licensee.

(2) No person licensed under this chapter, or any agent or employee of a licensee under this chapter, shall intentionally allow a person who has not attained 21 years of age to play or operate a slot machine or have access to the designated slot machine area of a facility of a slot machine licensee.

551.125 Prohibited activities and devices.--

(1) No complimentary alcoholic beverages shall be served to patrons within the designated slot machine gaming areas.

(2) A slot machine licensee shall not make any loan or provide credit or advance cash to enable a person to play a slot machine.

(3) A slot machine licensee shall not allow any automated teller machine or similar device designed to provide credit or dispense cash to be located within 50 feet of a designated slot machine gaming area within the facilities of the slot machine licensee.

(4) A slot machine licensee shall not accept or cash any third party, corporate, business, or government-issued check from any person.

(5) Each slot machine approved for use in this state shall be protected against manipulation or tampering to affect the random probabilities of winning plays, and the centralized computer management system shall enable the division or the Department of Law Enforcement to suspend play upon suspicion of

any manipulation or tampering. When play has been suspended on any slot machine, the division or the Department of Law Enforcement may examine any slot machine to determine whether the machine has been tampered with or manipulated and whether the machine should be returned to operation.

(6) No slot machine or the computer operating system linking the slot machine shall be linked by any means to any other slot machine or computer operating system of another slot machine licensee.

(7) No outcome of play or continuation of play may be manipulated, through programming or otherwise, to display a result that appears to be a near win, gives the impression that the player is getting close to a win, or in any way gives a false impression that the chance to win is improved by another play; however, this subsection does not apply to general promotional enticements such as graphic displays and sound effects that do not falsely imply that the chance of winning improves by continued play.

551.20 Days and hours of operation.--Slot machine gaming areas may be open 365 days a year. The slot machine gaming areas may be open only from 10:00 a.m. until 2:00 a.m. Sunday through Saturday.

551.202 Catering license.--A slot machine licensee is entitled to a caterer's license pursuant to s. 565.02 on days in which the pari-mutuel facility is open to the public for slot machine game play as authorized by this chapter.

551.204 Purchasing and employment by slot machine licensee.--

(1) The slot machine licensee shall maintain a policy of making purchases from vendors in this state. Furthermore, the slot machine licensee shall create opportunities to purchase from minority vendors and shall implement the policy and purchasing opportunities in a nondiscriminatory manner.

(2) The slot machine licensee shall maintain a policy of awarding preference in employment to residents of this state, as defined by law.

(3) The slot machine licensee shall use the Internet-based job listing system of the Agency for Workforce Innovation in advertising employment opportunities. Further, each slot machine licensee in its gaming operations shall create equal employment opportunities which shall be implemented in a nondiscriminatory manner in hiring and promoting employees to achieve the full and fair participation of women, Asians, blacks, Hispanics, Native Americans, persons with disabilities, and other protected groups within the city where the pari-mutuel facility is located, and an action plan and programs shall be implemented by each slot machine licensee designed to ensure that the percentage of the minority population in which the pari-mutuel facility is located is considered to the extent minority applications are submitted in equal proportion to the number of jobs open for hiring at entry level, managerial, supervisory, and any other positions, unless there is a bona fide occupational qualification requiring a distinct and unique employment expertise which a minority applicant does not possess.

551.25 Penalties for violations by licensee.--The division may revoke or suspend any license issued under this chapter upon

the willful violation by the licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a license, the division may impose a civil penalty against the licensee for a violation of this chapter or any rule adopted by the division. Except as otherwise provided in this chapter, the penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited into the Slot Machine Administrative Trust Fund in the department.

551.30 State Slot Machine Gaming Board.--

(1) CREATION.--

(a) There is created a board known as the State Slot Machine Gaming Board which shall be housed within the division.

(b) The board is not a unit or entity of state government. However, the board is subject to the provisions of s. 24, Art. I of the State Constitution and chapter 119, relating to public meetings and records and the provisions of chapter 286 relating to public meetings and records.

(c) The principal office of the board shall be in Tallahassee; however, the board may conduct meetings in any county where slot machine gaming is authorized to be conducted.

(d) The board shall hire or contract for all staff necessary for the proper execution of its powers and duties within the funds appropriated to implement this section and shall comply with the code of ethics for public officers and employees under part III of chapter 112. In no case may the board expend more than its annual appropriation for staffing and necessary administrative expenditures, including, but not

limited to, travel and per diem and audit expenditures, using funds appropriated to implement this section. The funds appropriated shall be derived from a portion of the imposition of regulatory fees to offset the costs of regulation.

(e) The division shall provide administrative support to the board as requested by the board. In the event of the dissolution of the board, the division shall be the board's successor in interest and shall assume all rights, duties, and obligations of the board.

(2) PURPOSE.--The board's purpose shall be to provide administrative advisory oversight to the division's regulation of slot machine gaming, monitor the impacts of slot machine gaming in the affected communities and the state as a whole, and ensure that the intent of s. 23, Art. X of the State Constitution is met as it relates to the expenditures of taxes on slot machines to supplement public education.

(3) MEMBERSHIP.--

(a) The board shall consist of nine voting members of high moral character, impeccable reputation, and demonstrable business expertise. No more than two members shall be residents of a county where slot machine gaming is authorized to be conducted. The Governor shall appoint the members of the board. The director of the division shall serve as an ex officio, nonvoting member of the board. Appointment of members of the board shall be confirmed by the Senate.

(b) Each member of the board shall serve for a term of 4 years, except that initially the Governor shall appoint three members for a term of 1 year, three members for a term of 2

years, and three members for a term of 4 years to achieve staggered terms among the members of the board. A member is not eligible for reappointment to the board, except that a member appointed to an initial term of 1 year or 2 years may be reappointed for an additional term of 4 years and a person appointed to fill a vacancy with 2 years or less remaining on the term may be reappointed for an additional term of 4 years.

(c) The Governor shall fill a vacancy on the board. A vacancy that occurs before the scheduled expiration of the term of the member shall be filled for the remainder of the unexpired term.

(d) Each member of the board who is not otherwise required to file financial disclosure under s. 8, Art. II of the State Constitution or s. 112.3144 shall file disclosure of financial interests under s. 112.3145.

(e) A person may not be appointed to the board if he or she has any direct or indirect interest in any slot machine licensee or any aspect of the gambling industry or any affiliated activities. A person appointed to the board shall be deemed an appointed state officer for the purposes of s. 112.313.

(f) Each member of the board shall serve without compensation, but shall receive travel and per diem expenses as provided in s. 112.061 while in the performance of his or her duties.

(g) Each member of the board is accountable for the proper performance of the duties of office, and each member owes a fiduciary duty to the people of the state to ensure that all

activities are conducted in furtherance of this section. The Governor may remove a member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, unexcused absence from three consecutive meetings of the board, arrest or indictment for a crime that is a felony or a misdemeanor involving theft or moral turpitude, a crime of dishonesty, or pleading nolo contendere to, or being found guilty of, any crime.

(4) ORGANIZATION; MEETINGS.--

(a)1. The board shall annually elect a chairperson and a vice chairperson from among the board's members. The members may, by a vote of five of the nine board members, remove a member from the position of chairperson or vice chairperson prior to the expiration of his or her term as chairperson or vice chairperson. His or her successor shall be elected to serve for the balance of the removed chairperson's or vice chairperson's term.

2. The chairperson is responsible to ensure that records are kept of the proceedings of the board and is the custodian of all books, documents, and papers filed with the board, the minutes of meetings of the board, and the official seal of the board.

(b)1. The board shall meet upon the call of the chairperson or at the request of a majority of the members, but no less than quarterly per calendar year.

2. A majority of the voting members of the board constitutes a quorum. Except as otherwise provided in this section, the board may take official action by a majority vote

of the members present at any meeting at which a quorum is present. Members may not vote by proxy.

3. A member of the board may participate in a meeting of the board by telephone or video conference through which each member may hear every other member.

(5) POWERS AND DUTIES.--The board:

(a) May perform all acts and things necessary or convenient to carry out the powers expressly granted in this section.

(b) May recommend to the division and the Legislature expenditures from regulatory funds provided by this chapter, including any necessary administrative expenditures consistent with its powers, and ways to supplement public education from taxes collected from slot machine gaming.

(c) May receive and review reports and financial documentation provided by the slot machine licensee pursuant to this chapter to monitor compliance with the provisions of this chapter.

(d) May receive testimony and information from law enforcement officials regarding the impact of slot machine gaming on criminal activity in and around slot machine facilities.

(e) May receive testimony and information from local governments and tourist development councils regarding the impact of slot machine gaming on their communities and the tourism of their respective areas.

(f) May make recommendations to the division and to the Office of Program Policy Analysis and Government Accountability

on the performance measures for the regulatory responsibilities set forth in this chapter.

(g) May monitor criminal activity in and around the slot machine facilities in this state and recommend to the Legislature ways to curb such activity.

(h) May receive testimony from education officials, education groups, and the public regarding the expenditures of taxes received from slot machine gaming and make recommendations to the Legislature on ways to spend these funds to supplement public education.

(i) Shall prepare an annual report as prescribed herein.

(j) Shall make recommendations to the division on reporting requirements on slot machine gaming facilities. The board shall recommend to the division the means, method, and timing of reporting, at a minimum, in the following areas:

1. The net number and dollar value of all jobs created, including the number of jobs held by Florida residents.

2. The total net amount of revenues generated for state government from all tax and fee sources related to the slot machine operation.

3. The measures taken by the slot machine licensee to prevent, control, and treat problem gambling.

4. The operational status and quality of operation of the slot machine licensee's preslot machine pari-mutuel enterprise.

5. Documentation of continuing capital reinvestment by the slot machine licensee for the economic benefit of the community.

6. Information relating to all complaints and charges of violations by a slot machine facility constituting a nuisance and the outcome of such charges.

7. A detailed summary of all lobbying activities conducted by or on behalf of the slot machine licensee, including the amount and source of funds expended.

(6) REVIEW OF RULES.--The division shall provide a copy of any proposed rules to the board and allow sufficient time for review and response by the board. Emergency rules shall not be subject to this requirement.

(7) ANNUAL REPORT.--By December 1 of each year, the board shall prepare a report of the activities and outcomes under this section for the preceding fiscal year. The report, at a minimum, must include:

(a) A description of the activities of the board and slot machine licensees and a description of the substance of reports required for submission by the licensee to the board.

(b) A description of the public testimony received by the board.

(c) A description of any resolutions from county or municipal governments or tourist development councils or affidavits from law enforcement officials received by the board.

(d) Information on the number and salary level of jobs created by each of the slot machine licensees, including the number and salary level of jobs created for residents of this state.

(e) Information collected, if any, on the amount and nature of economic activity generated through the slot machine

operations-related activities of each of the slot machine licensees.

(f) A compliance and financial audit of the accounts and records of the board at the end of the preceding fiscal year conducted by the division.

(g) A description of any recommendations made to the division or the Legislature by the board consistent with its grant of authority herein.

The board shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(8) OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY; PROGRAM EVALUATION.--

(a) Before January 1, 2008, and annually thereafter, the Office of Program Policy Analysis and Government Accountability shall conduct a performance audit of the board, the division, and slot machine licensees relating to the provisions of this chapter. The audit shall assess the implementation and outcomes of activities under this chapter. The audit shall include an evaluation of reports and financial documentation provided to the board under paragraphs (5)(c)-(e) by the slot machine licensee, law enforcement officials, local governments, and tourist development councils, and reports provided to the board under paragraph (5)(j) including documentation of continuing capital reinvestment by the slot machine licensee and information relating to violations by a slot machine facility constituting a nuisance. At a minimum, the audit shall address:

1. Performance of the slot machine licensees in operating slot machine gaming and complying with the rules under this chapter.

2. Performance of the board under this chapter.

3. Compliance by the board with the provisions of this section and the provisions of the rules.

4. Economic activity generated through slot machine operations by the slot machine licensees.

5. The expenditure of slot machine taxes and whether these expenditures supplemented or supplanted public education dollars.

(b) A report of each audit's findings and recommendations shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

551.33 Law enforcement affidavits.--The chief law enforcement officer of any county or municipality where a slot machine licensee is authorized to conduct slot machine gaming at a pari-mutuel facility and the chief law enforcement officer of any municipality contiguous to a municipality where such slot machine licensee is authorized to conduct slot machine gaming shall execute at least once annually an affidavit verifying, based upon information or belief, whether the applicable local budgeting authority has provided sufficient funding to adequately address additional law enforcement responsibilities directly or indirectly resulting from the slot machine gaming operations. The affidavit shall be transmitted to the board.

551.34 Local government resolutions.--

(1) The board of county commissioners and the governing body of a municipality where a slot machine licensee is authorized to conduct slot machine gaming and any municipality contiguous to the municipality where such slot machine licensee is authorized to conduct slot machine gaming must adopt a resolution at least once annually that expresses, at a minimum, whether slot machine gaming is being operated in a manner that demonstrates a commitment to ameliorate detriment to the public economic and social health, safety, and welfare of the community governed by the applicable body.

(2) The governing body of any municipality that is not required to adopt a resolution pursuant to subsection (1) may adopt a resolution addressing slot machine gaming impacts on the local community. The resolution should contain a recitation of those factual circumstances which support a conclusion that the operations of the slot machine licensee have a substantial effect on the public economic and social health, safety, and welfare of the municipality.

(3) The resolution shall be transmitted to the board.

551.341 Tourist development council resolutions.--

(1) Any tourist development council, organized under the provisions of part I of chapter 125, or the board of county commissioners if there is no tourist development council in that county, must adopt a resolution at least once annually that expresses, at a minimum, whether slot machine gaming is being operated in a manner that demonstrates a commitment to the growth and expansion of tourism in this state and a commitment to ameliorate detriment to communities that are current tourist

destinations but do not have slot machine gaming being conducted at pari-mutuel facilities within their jurisdiction.

(2) The resolution should contain a recitation of those factual circumstances which support a conclusion that the operations of slot machine licensees have a substantial positive or negative effect on the expansion and growth of tourism within their jurisdiction. Tourism impacts shall be supported, as a part of the resolution, by statistical data and other practical collateral impacts and evidence on local tourism activity.

(3) The resolution shall be transmitted to the board.

551.40 Compulsive gambling program.--The division may contract for provision of services related to the prevention and treatment of compulsive and addictive gambling. The terms of any contract for the provision of such services shall include accountability standards that must be met by any private provider. The failure of any private provider to meet any material terms of the contract, including the accountability standards, shall constitute a breach of contract or grounds for nonrenewal. The division may consult with the Department of the Lottery in the development of the program and the development and analysis of any procurement for contractual services for its compulsive or addictive gambling treatment program. The compulsive or addictive gambling treatment program shall be funded from the annual nonrefundable regulatory fee provided for in s. 551.108(1)(a).

Section 5. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.--

(1) It is unlawful:

(a) ~~(1)~~ To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) ~~(2)~~ To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(2) Pursuant to section 2 of that certain chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce", approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177, the State of Florida, acting by and through its duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section

2 of such chapter of Congress, declare and proclaim that any county of the State of Florida, within which slot machine gaming is authorized pursuant to chapter 551 is exempt from the provisions of section 2 of that certain chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce", designated U.S.C. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to chapter 551, the registering, recording, and labeling of which have been duly done by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that certain chapter of the Congress of the United States entitled, "An act to prohibit transportation of gaming devices in interstate and foreign commerce", approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177, shall be deemed legal shipments thereof into any such county provided the destination of such shipments is to a licensed eligible facility as defined s. 551.103.

Section 6. Subsections (1) and (2) of section 895.02, Florida Statutes, are amended to read:

895.02 Definitions.--As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

4. Section 414.39, relating to public assistance fraud.

5. Section 440.105 or s. 440.106, relating to workers' compensation.

6. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs.

8. Part IV of chapter 501, relating to telemarketing.

9. Chapter 517, relating to sale of securities and investor protection.

10. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

11. Chapter 550, relating to jai alai frontons.

12. Section 551.1113, relating to slot machine gaming.

13.~~12.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

14.~~13.~~ Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

15.~~14.~~ Chapter 562, relating to beverage law enforcement.

16.~~15.~~ Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

17.~~16.~~ Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

18.~~17.~~ Chapter 687, relating to interest and usurious practices.

19.~~18.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

20.~~19.~~ Chapter 782, relating to homicide.

21.~~20.~~ Chapter 784, relating to assault and battery.

22.~~21.~~ Chapter 787, relating to kidnapping.

23.~~22.~~ Chapter 790, relating to weapons and firearms.

24.~~23.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.

25.~~24.~~ Chapter 806, relating to arson.

26.~~25.~~ Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

27.~~26.~~ Chapter 812, relating to theft, robbery, and related crimes.

28.~~27.~~ Chapter 815, relating to computer-related crimes.

29.~~28.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

30.~~29.~~ Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

31.~~30.~~ Section 827.071, relating to commercial sexual exploitation of children.

32.~~31.~~ Chapter 831, relating to forgery and counterfeiting.

33.~~32.~~ Chapter 832, relating to issuance of worthless checks and drafts.

34.~~33.~~ Section 836.05, relating to extortion.

35.~~34.~~ Chapter 837, relating to perjury.

36.~~35.~~ Chapter 838, relating to bribery and misuse of public office.

37.~~36.~~ Chapter 843, relating to obstruction of justice.

38.~~37.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

39.~~38.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

40.~~39.~~ Chapter 874, relating to criminal street gangs.

41.~~40.~~ Chapter 893, relating to drug abuse prevention and control.

42.~~41.~~ Chapter 896, relating to offenses related to financial transactions.

43.~~42.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

44.~~43.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

(2) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

2. Chapter 550, relating to jai alai frontons.

3. Section 551.1113, relating to slot machine gaming.

4.~~3.~~ Chapter 687, relating to interest and usury.

5.~~4.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

Section 7. The Legislature has exclusive authority over the conduct of all wagering occurring at a slot machine facility in this state. Only the division and other authorized state agencies shall administer chapter 551, Florida Statutes, and regulate the slot machine gaming industry, including operation of slot machine facilities, games, slot machines, and centralized computer management systems authorized in chapter 551 and the rules adopted by the division.

Section 8. Referenda.--

(1) Notwithstanding any other provision of law, a county in which a slot machine facility is located may call a referendum to give the voters an opportunity to deauthorize slot machine operations as an undue burden on the county, and shall call such referendum upon a petition signed by the lesser of 10,000 electors or 1 percent of the electors residing within the county.

(2) When a referendum is called as a result of a petition having been signed by a sufficient number of the electors of a county, the county supervisor of elections shall conduct such referendum on the day of any state or county primary or general election that is being held for any purpose other than for the purpose of deauthorizing slot machine operations as an undue burden. The question on the ballot shall be:

SHOULD THE OPERATION OF SLOT MACHINES IN [COUNTY NAME] BE DEAUTHORIZED AS AN UNDUE BURDEN UPON THE COUNTY?

(3) The results shall be certified to the Division of Elections of the Department of State.

(4) Notwithstanding any other provision of law, each municipality and county in which a slot machine facility is located and each municipality that is contiguous to a municipality where a slot machine facility is located may call a referendum to give the voters an opportunity to declare the slot machine operation an undue burden on the community, and shall call such referendum upon:

(a) Petition signed by the lesser of 1,000 electors or 5 percent of the electors residing within the municipality; or

(b) Petition signed by the lesser of 10,000 electors or 1 percent of the electors residing within the county.

(5) When a referendum is called as a result of a sufficient number of petitions having been signed by the electors of a county or municipality, the county supervisor of elections shall conduct such referendum on the day of any state, county, or municipal primary or general election or on the day of any election of such county or municipality that is being held for any purpose other than for the purpose of declaring whether the operation of slot machines is an undue burden. The question on the ballot shall be:

SHOULD THE OPERATION OF SLOT MACHINES IN [NAME OF COUNTY] [NAME OF MUNICIPALITY] OR IN A MUNICIPALITY CONTIGUOUS TO [NAME OF MUNICIPALITY] BE DECLARED AN UNDUE BURDEN?

(6) The results shall be transmitted to the board for its consideration and inclusion in its annual report and to the Office of Program Policy Analysis and Government Accountability for its use in conducting performance audits and evaluations.

(7) Once the question on the ballot has been placed before the electors of a county or municipality, the question shall not be presented in another referendum in that county or that municipality for at least 2 years.

Section 9. Any tribal-state compact relating to gaming activities which is entered into by an Indian tribe in this state and the Governor pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq., must be conditioned upon ratification by the Legislature.

Section 10. Department of Transportation study of transportation facilities providing access to pari-mutuel facilities and Indian reservations; report and recommendations authorized.--

(1) The Department of Transportation is directed to conduct a study of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands are having on public roads and other transportation facilities, regarding traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, costs of potential future widening or other improvements, and other impacts on the motoring, nongaming public.

(2) The study shall include, but is not limited to, the following information:

(a) A listing, description, and functional classification of the access roads to and from pari-mutuel facilities and Indian reservations that conduct slot machine gaming in the state.

(b) An identification of the access roads identified under paragraph (a) that are either scheduled for improvements within the Department of Transportation's 5-year work program or are listed on the 20-year, long-range transportation plan of the department or a metropolitan planning organization.

(c) The most recent traffic counts on the access roads and projected future usage, as well as any projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps, or other area transportation facilities.

(d) The safety and maintenance ratings of each access road and a detailed review of impacts on local and state emergency management agencies to provide emergency or evacuation services.

(e) The estimated infrastructure costs to maintain, improve, or widen these access roads based on future projected needs.

(f) The feasibility of implementing tolls on these access roads or, if already tolled, raising the toll to offset and mitigate the impacts of traffic generated by pari-mutuel and by Indian reservation slot machine gaming activities on nontribal communities in the state and to finance projected future improvements to the access roads.

(3) The department shall present its findings and recommendations in a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2006. The report may include any department recommendations for proposed legislation.

Section 11. (1) Sixty-four full-time equivalent positions are authorized and the sum of $4,792,259 in recurring and $4,036,486 in nonrecurring funds is hereby appropriated from the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation for the purpose of carrying out all regulatory activities provided herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Department of Business and Professional Regulation submits an expenditure plan for approval to the Executive Office of the Governor, and the chair and vice

chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(2) The sum of $2,634,349 in recurring and $1,814,916 in nonrecurring funds is hereby appropriated from the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation for transfer to the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, and any other responsibilities as provided for herein. Fifty-seven full-time equivalent positions are authorized and the sum of $2,634,349 in recurring and $1,814,916 in nonrecurring funds is hereby appropriated from the Operating Trust Fund in the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, and any other responsibilities as provided for herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Department of Law Enforcement submits an expenditure plan for approval to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(3) The sum of $158,154 in recurring and $24,498 in nonrecurring funds is hereby appropriated from the Slot Machine Administrative Trust Fund in the Department of Business and Professional Regulation for transfer to the Office of the State Attorney, 17th Judicial Circuit, for the purpose of prosecution of offenses associated with gaming operations. Ten full-time equivalent positions are authorized and the sum of $158,154 in

recurring and $24,498 in nonrecurring funds is hereby appropriated from the Grants and Donations Trust Fund in the Office of the State Attorney, 17th Judicial Circuit, for the purpose of prosecution of offenses associated with gaming operations. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Office of the State Attorney, 17th Judicial Circuit, submits an expenditure plan for approval to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

Section 12. This act shall take effect July 1, 2005.

Select Year: 2005 **Select Chamber:** Senate Go

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Senate 1174: Relating to Pari-Mutuel Wagering

S1174 GENERAL BILL/CS/CS/CS by Ways and Means; Judiciary; Regulated Industries; Jones (Compare H 1569, H 1571, 2ND ENG/H 1901, 1ST ENG/H 1903, S 1342)

Pari-Mutuel Wagering; requires Pari-mutuel Wagering Div. in DBPR to maintain certain records re injuries & disposition of greyhounds that race in this state; authorizes slot machines & slot machine gaming within certain pari-mutuel facilities located in Miami-Dade & Broward Counties upon approval by local referendum; clarifies authority of local law enforcement agencies; provides for local supplemental tax; provides compulsive gambling treatment program, etc. Amends FS. APPROPRIATION: $14,910,626. EFFECTIVE DATE: Upon becoming law except as otherwise provided.

02/04/05 SENATE Filed
02/18/05 SENATE Referred to Regulated Industries; Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar
03/08/05 SENATE Introduced, referred to Regulated Industries; Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar -SJ 00073
03/10/05 SENATE Withdrawn from- Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar -SJ 00124; Rereferred to Judiciary; Government Efficiency Appropriations; General Government Appropriations; Ways and Means -SJ 00124
03/22/05 SENATE Withdrawn from- Ways and Means -SJ 00246
03/31/05 SENATE On Committee agenda-- Regulated Industries, 04/05/05, 1:00 pm, 110-S
04/05/05 SENATE CS by Regulated Industries; YEAS 6 NAYS 3 -SJ 00378; CS read first time on 04/07/05 -SJ 00382
04/07/05 SENATE Now in Judiciary -SJ 00378
04/13/05 SENATE Withdrawn from- General Government Appropriations -SJ 00418
04/15/05 SENATE On Committee agenda-- Judiciary, 04/20/05, 9:15 am, 401-S --Not considered
04/20/05 SENATE On Committee agenda-- Judiciary, 04/22/05, 9:30 am, 401-S
04/21/05 SENATE Withdrawn from- Government Efficiency Appropriations -SJ 00553; Rereferred to Ways and Means -SJ 00553
04/22/05 SENATE CS/CS by Judiciary; YEAS 7 NAYS 1 -SJ 00567; CS read first time on 04/26/05 -SJ 00575
04/25/05 SENATE Now in Ways and Means -SJ 00567; On Committee agenda-- Ways and Means, 04/26/05, 5:15 pm, 412-K
04/26/05 SENATE CS/CS/CS by- Ways and Means; YEAS 14 NAYS 1 -SJ 00640; CS read first time on 04/27/05 -SJ 00644
04/27/05 SENATE Placed on Calendar, on second reading -SJ 00640
05/04/05 SENATE Placed on Special Order Calendar -SJ 01074
05/05/05 SENATE Placed on Special Order Calendar
05/06/05 SENATE Placed on Special Order Calendar; Read second time -SJ 01559; Amendment(s) adopted -SJ 01559; Substituted HB 1901 (Died in Senate) -SJ 01560; Laid on Table

Florida Senate - 2005 **CS for CS for CS for SB 1174**

By the Committees on Ways and Means; Judiciary; Regulated Industries; and Senator Jones

576-2329-05

A bill to be entitled

An act relating to pari-mutuel wagering; amending s. 550.2415, F.S.; requiring the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation to maintain certain records regarding injuries and the disposition of greyhounds that race in this state; providing guidelines and requirements for injury and disposition report forms; providing for the adoption of rules; providing penalties; creating ch. 551, F.S.; implementing s. 23, Art. X of the State Constitution; authorizing slot machines and slot machine gaming within certain pari-mutuel facilities located in Miami-Dade and Broward Counties upon approval by a local referendum; providing definitions; providing powers and duties of the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation; clarifying the authority of local law enforcement agencies; providing for licensure to conduct slot machine gaming; providing for slot machine licensure renewal; providing for a license fee, machine fee, and tax rate; providing for a local supplemental tax; requiring occupational licenses and application fees; prohibiting certain business relationships; prohibiting certain acts and providing penalties; providing an exception to prohibitions relating to slot machines;

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Florida Senate - 2005 **CS for CS for CS for SB 1174**

576-2329-05

providing for the exclusion of certain persons from facilities; prohibiting minors under 21 years of age from playing slot machines; designating slot machine gaming areas; prohibiting automated teller machines on the property of a slot machine licensee; providing for days and hours of operation; providing penalties; providing a compulsive gambling treatment program; providing for a fee; providing for a caterer's license; providing for rulemaking; providing for the conduct of a referendum election for slot machines; providing for elections for ratification of slot machine licensing; authorizing additional positions and providing appropriations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective July 1, 2005, subsection (6) of section 550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.--

(6)(a) It is the intent of the Legislature that animals that participate in races in this state on which pari-mutuel wagering is conducted and animals that are bred and trained in this state for racing be treated humanely, both on and off racetracks, throughout the lives of the animals.

(b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal

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injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.

(c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.

(d) A conviction of cruelty to animals pursuant to s. 828.12 involving a racing animal constitutes a violation of this chapter.

(e) The division shall maintain accurate records and statistics regarding injuries incurred by greyhounds that race in this state. The division shall adopt rules requiring the reporting of injuries incurred by greyhounds while racing in this state, including schooling races. Such reports must include:

1. The greyhound's registered name and right and left ear tattoo numbers.

2. The name, business address, and telephone number of the greyhound owner, trainer, and kennel operator.

3. The color, weight, and sex of the greyhound.

4. The specific type of injury, the cause of the injury, the estimated recovery time, and the location of the injury on the greyhound.

5. Where the injury occurred, whether on a racing track or in another area.

6. If the injury occurred while the greyhound was racing, the racetrack where the injury occurred; the distance, grade, race, and post position when the injury occurred; and

the weather conditions, time, temperature, and track condition at the time of the injury.

7. A certification by the racetrack veterinarian that

the form is correct.

(f) The division shall maintain accurate records and statistics regarding the disposition of greyhounds that participate in racing in this state. The division shall adopt rules requiring the reporting of the disposition of greyhounds that race in this state, including schooling races. As used in the reporting requirement, the term "disposition" means death, transfer to another jurisdiction, retirement, adoption, sale, or donation for medical research or another purpose. Such reports must include:

1. The greyhound's registered name and right and left ear tattoo numbers; the name, business address, and telephone number of the greyhound owner, trainer, and kennel operator; and the name and address of the race track where the greyhound last raced prior to disposition.

2. If the greyhound was transferred to another track, the name and address of the track that received the greyhound and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of that track.

3. If the greyhound was retired for breeding, the name and address of the facility that received the greyhound and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of that facility.

4. If the greyhound was adopted or placed for adoption, the name and address of the person that received the greyhound and, if applicable, the name, business address,

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telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of the adoption facility.

5. If the greyhound was euthanized, the name, address, professional title, professional affiliation of the person

performing the euthanasia, method of euthanasia, and reason the greyhound was euthanized rather than adopted.

6. If the greyhound was sold or donated, the name of the person to whom the greyhound was sold or donated, and if donated, the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of the donee.

7. If the disposition of the greyhound does not fit into any of the above categories, the name of the person to whom the greyhound was transferred, and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound.

8. Certification by the owner, trainer, and kennel operator that the disposition forms are correct.

(g) The division shall maintain injury and disposition records for 7 years.

(h) In addition to other penalties imposed by law, a person who knowingly makes a false statement on an injury or disposition form commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who knowingly makes a false statement on an injury or disposition form on a second or subsequent occasion commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Chapter 551, Florida Statutes, consisting of sections 551.101, 551.102, 551.103, 551.104, 551.105,

551.106, 551.107, 551.108, 551.109, 551.110, 551.111, 551.112, 551.113, 551.114, 551.116, 551.117, 551.118, 551.119, 551.120, and 551.121, is created to read:

CHAPTER 551

SLOT MACHINES

551.101 Slot machine gaming authorized.--Any existing, licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the

State Constitution which has conducted live racing or games during calendar years 2002 and 2003 may possess slot machines and conduct slot machine gaming at the location where the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law provided a majority of voters in a countywide referendum have approved the possession of slot machines at such facility in the respective county. Notwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess and conduct slot machine gaming or to participate in slot machine gaming described in this chapter.

551.102 Definitions.--As used in this chapter, the term:

(1) "Central control computer" means a central site computer controlled and accessible by the division to which all slot machines at a gaming facility communicate for the purposes of auditing capacity; real-time information retrieval of the details of any financial event that occurs in the operation of a slot machine, including, but not limited to, coin in, coin out, ticket in, ticket out, jackpots, machine

door openings and power failure; and remote machine activation and disabling of slot machines.

(2) "Designated slot machine gaming area" means the area of an eligible facility, which may include any addition, alteration, or new structure located on the premises described in the pari-mutuel permit issued by the division for the conduct of pari-mutuel wagering, in which slot machine gaming may be conducted in accordance with the provisions of this chapter.

(3) "Distributor" means any person that sells, leases,

or offers, or otherwise provides, distributes, or services, any slot machine or associated equipment for use or play of slot machines in this state. A manufacturer may be a distributor within the state.

(4) "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(5) "Eligible facility" means any existing licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the State Constitution which has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county.

(6) "Independent testing laboratory" means a laboratory of national reputation which is demonstrably competent and qualified to scientifically test and evaluate slot machines for compliance with this chapter and to otherwise perform the functions assigned to it in this chapter. An independent testing laboratory shall not be owned or controlled by a licensee. The use of an independent testing

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laboratory for any purpose related to the conduct of slot machine gaming by a licensee under this chapter shall be made from a list of one or more laboratories approved by the division.

(7) "Manufacturer" means any person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs, or otherwise makes modifications to any slot machine or associated equipment for use or play of slot machines in this state for gaming purposes. A manufacturer may be a distributor within the state.

(8) "Progressive system" means a computerized system linking slot machines in one or more licensed facilities within this state and offering one or more common progressive

payouts based on the amounts wagered.

(9) "Slot machine" means any mechanical or electrical contrivance, terminal, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. A slot machine:

(a) May use spinning reels or video displays or both.

(b) May or may not dispense coins, tickets, or tokens to winning patrons.

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(c) May use an electronic credit system for receiving wagers and making payouts.

The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device.

(10) "Slot machine license" means a license issued by the division authorizing an eligible facility to place and operate slot machines as required by the provisions of this chapter and the rules.

(11) "Slot machine licensee" means an eligible facility that holds a slot machine license.

(12) "Slot machine operator" means a person employed or contracted by the owner of an eligible facility to conduct slot machine gaming at that eligible facility.

(13) "Slot machine owner" means a person who holds a material interest in the slot machines.

(14) "Slot machine revenues" means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

551.103 Powers and duties.--

(1) The division shall adopt, pursuant to the provisions of ss. 120.536(1) and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules shall include:

(a) Procedures for applying for a license and renewal of a license.

(b) Procedures for establishing technical requirements in addition to the qualifications that are necessary to

receive a slot machine license or slot machine occupational license.

(c) Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this chapter.

(d) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machines through the central control computer.

(e) Procedures for requiring each licensee at his or her own cost and expense to supply the division with a bond having the penal sum of $2 million payable to the Governor and his or her successors in office for the licensee's first year of slot machine operations; and, thereafter, the licensee shall file a bond with the penal sum as determined by the division pursuant to rules adopted to approximate anticipated state revenues from the licensee's slot machine operations.

Any bond shall be issued by a surety or sureties to be approved by the division and the Chief Financial Officer, conditioned to faithfully make the payments to the Chief Financial Officer in his or her capacity as treasurer of the division. The licensee shall be required to keep its books and records and make reports as provided in this chapter and to conduct its slot machine operations in conformity with this chapter and all other provisions of law. The division may review the bond for adequacy and require adjustments each fiscal year. Such bond shall be separate and distinct from the bond required in s. 550.125.

(f) Procedures for requiring licensees to maintain specified records and submit any data, information, record, or

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report, including financial and income records, required by this chapter or determined by the division to be necessary to the proper implementation and enforcement of this chapter.

(g) Procedures for requiring that the payout percentage of a slot machine shall be no less than 85 percent per facility.

(2) The division shall conduct such investigations as the division determines necessary to fulfill its responsibilities under the provisions of this chapter.

(3) The division shall investigate criminal violations of this chapter and may investigate any other criminal violation of law occurring on the facilities of a slot machine licensee and such investigations may be conducted in conjunction with the appropriate state attorney and appropriate law enforcement agencies. The division and its employees and agents shall have such other law enforcement powers as specified in ss. 943.04 and 943.10.

(4) The division shall have unrestricted access to the slot machine licensee facility at all times and shall require of each slot machine licensee strict compliance with the laws

of this state relating to the transaction of such business. The division may:

(a) Inspect and examine premises where slot machines are offered for play.

(b) Inspect slot machines and related equipment and supplies.

(c) Collect taxes, assessments, fees, and penalties.

(d) Deny, revoke, suspend, or place conditions on the license of a person who violates any provision of this chapter or rule adopted pursuant thereto.

(5) The division shall revoke or suspend the license of any person who is no longer qualified or who is found, after receiving a license, to have been unqualified at the time of application for the license.

(6) Nothing in this section shall be construed to prohibit law enforcement authorities within the jurisdiction of a slot machine licensee facility from conducting criminal investigations occurring on the facilities of the slot machine licensee.

(7) Nothing in this section shall be construed to restrict access to the slot machine licensee facility by local law enforcement authorities within the jurisdiction of the slot machine licensee facility.

(8) Nothing in this section shall be construed to restrict access to information and records necessary to the investigation of criminal activity which are contained within the slot machine licensee facility by local law enforcement authorities.

551.104 License to conduct slot machine gaming.--

(1) Upon application and a finding by the division after investigation that the application is complete and the applicant is qualified and payment of the initial license fee, the division shall issue a license to conduct slot machine

gaming in the designated slot machine gaming area of the slot machine licensee's facility. Once licensed, slot machine gaming may be conducted subject to the requirements of this chapter and rules adopted pursuant thereto.

(2) An application may be approved by the division only after the voters of the county where the applicant's facility is located have authorized by referendum slot

machines within pari-mutuel facilities in that county as specified in s. 23, Art. X of the State Constitution.

(3) A slot machine license may be issued only to a licensed pari-mutuel permitholder, and slot machine gaming may be conducted only at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities.

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(a) Continue to be in compliance with this chapter.

(b) Continue to be in compliance with chapter 550, where applicable, and maintain the pari-mutuel permit and license in good standing pursuant to the provisions of chapter 550. Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility shall be entitled within 60 days after the effective date of this act to amend its 2005-2006 license issued by the Division of Pari-mutuel Wagering and shall be granted the requested changes in its authorized performances pursuant to such amendment. The Division of Pari-mutuel Wagering shall issue a new license to the eligible facility to effectuate an amendment.

(c) Conduct not less than a full schedule of live performances or games as defined in s. 550.002(11).

(d) Upon approval of any changes relating to the pari-mutuel permit by the division, be responsible for providing appropriate current and accurate documentation on a timely basis to the division in order to continue the slot machine license in good standing.

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(e) Allow unrestricted access and right of inspection by the division to facilities of a slot machine licensee in which any activity relative to the conduct of slot machine gaming is conducted.

(f) Submit a security plan, including a slot machine floor plan, location of security cameras, and the listing of security equipment that is capable of observing and electronically recording activities being conducted in the designated slot machine gaming area.

(g) Use the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities. Further, each slot machine licensee in its gaming operations shall create equal employment opportunities that shall be implemented in a nondiscriminatory manner in hiring and promoting employees to achieve the full and fair participation of women, Asians, blacks, Hispanics, Native Americans, persons with disabilities, and other protected groups within the municipality where the pari-mutuel facility is located, and an action plan and programs shall be implemented by each pari-mutuel facility designed to ensure that the percentage of the minority population in the area in which each pari-mutuel facility is located is considered to the extent minority applications are submitted in equal proportion to the number of jobs open for hiring at entry level, managerial, supervisory, and any other positions, unless there is a bona fide occupational qualification requiring a distinct and unique employment expertise that a minority applicant does not possess.

(5) A slot machine license is not transferable.

551.105 Slot machine license renewal.--

(1) Slot machine licenses shall be renewed annually. The application for renewal shall contain all revisions to the information submitted in the prior year's application which is necessary to maintain such information as both accurate and current.

(2) The applicant for renewal shall attest that any information changes do not affect the applicant's qualifications for license renewal.

(3) Upon determination by the division that the application for renewal is complete and qualifications have been met, including payment of the renewal fee, the slot machine license shall be renewed annually.

551.106 License fee; machine fee; tax rate.--

(1) LICENSE FEE.--Upon approval of the application for a slot machine license, the licensee must pay to the division an initial license fee of $4 million for the first year of operation. Thereafter, an annual license fee of $1,000 per slot machine shall be paid. Such payment shall be made directly to the Pari-mutuel Wagering Trust Fund established pursuant to s. 455.116. Such payments shall be accounted for separately from taxes or fees paid pursuant to the provisions of chapter 550. Such funds in such trust fund may be appropriated annually by the Legislature to the division for its administration of this chapter and carrying out of its regulatory functions set forth in this chapter.

(2) TAX ON SLOT MACHINE REVENUES.

(a) The tax rate on slot machine revenues on each facility shall be:

1. Thirty percent on revenue of $100 million or less;

2. Thirty-two and one-half percent on revenue greater

than $100 million, but less than or equal to $200 million; and

3. Thirty-five percent on all revenue greater than $200 million.

(b) The tax shall be collected on a daily basis and deposited into the Public Education Capital Outlay and Debt Service Trust Fund.

(c) The division shall notify the eligible facility concerning the appropriate tax rate to apply to the slot machine revenues.

(3) PAYMENT PROCEDURES.--Tax payments shall be remitted daily, as determined by rule of the division. The slot machine licensee shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month which shall show all slot machine activities for the preceding calendar month and such other information as may be required by the division.

(4) FAILURE TO PAY TAX; PENALTIES.--A slot machine licensee who fails to make tax payments as required under this section is subject to an administrative penalty of up to $1,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected shall be deposited into the Pari Mutuel Wagering Trust Fund in the Department of Business and Professional Regulation. If any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may suspend, revoke, or fail to renew the license of the slot machine licensee.

(5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR FAIL TO RENEW THE LICENSE.--In addition to the penalties imposed under subsection (4), any willful or wanton failure by a slot machine licensee to make payments of the tax constitutes sufficient grounds for the division to suspend,

revoke, or fail to renew the license of the slot machine licensee.

(6) SUBMISSION OF FUNDS.--The division may require slot machine licensees to remit taxes, fees, fines, and assessments by electronic funds transfer.

(7) LOCAL EDUCATION SUPPLEMENTAL SLOT MACHINE TAX.--

(a) On January 1 of each year, an annual tax of $500 per machine shall be imposed upon each slot machine approved for use at any slot machine licensee's facility. The slot machine licensee shall, on or before March 1 of each year, pay the total amount of such tax to the division. The division shall deposit any tax imposed pursuant to this subsection in the Educational Enhancement Trust Fund in the Department of Education on or before July 1 of each year. The Department of Education shall, on or before August 1 of each year, forward to the school district where a slot machine licensee is located, any tax revenues collected from such slot machine licensee pursuant to this subsection. The school district shall use such revenues to pay additional:

1. Supplemental public education instruction expenses;

2. Classroom and school facilities construction expenses;

3. School safety expenses; or

4. Educational infrastructure expenses.

All expenses under this paragraph must have been incurred as a direct result of the slot machine licensee's operation of slot machines in the school district during the immediately preceding school year.

(b) On or before June 30 of each year following a school district's receipt of tax revenues, the Department of

Education shall conduct a independent audit for purposes of confirming the amount of any additional expenses to the school district which are attributable to such district as a direct result of the slot machine licensee's operations of slot machines in the school district during the immediately preceding school year. The amount of the tax revenues received from a slot machine licensee pursuant to this section, in excess of the amount of any such additional direct expenses, as determined by the Department of Education audit, shall be returned to the Educational Enhancement Trust Fund within 90 days after the audit becomes final.

551.107 Occupational license required; application; fee.--

(1) The individuals and entities that are licensed under this section require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a criminal records check.

(2)(a) The following licenses shall be issued to persons or entities having access to the designated slot machine gaming area or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories:

1. General occupational licenses for general employees, food service, maintenance, and other similar service and support employees having access to the designated slot machine gaming area. Service and support employees with a current pari-mutuel occupational license issued pursuant to chapter 550 and a current background check are not required to submit to an additional background check for a slot machine

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occupational license as long as the pari-mutuel occupational license remains in good standing.

2. Professional occupational licenses for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, floor supervisor, security personnel, or any other similar position of oversight of gaming operations.

3. Business occupational licenses for any slot machine management company or slot machine business associated with slot machine gaming or a person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees or any person not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.

(b) Slot machine occupational licenses are not transferable.

(3) A slot machine licensee shall not employ or otherwise allow a person to work at a slot machine facility unless such person holds a valid occupational license. A slot machine licensee shall not contract or otherwise do business with a business required to hold a slot machine occupational license unless the business holds such a license. A slot machine licensee shall not employ or otherwise allow a person to work in a supervisory or management professional level at a slot machine facility unless such person holds a valid occupational license.

(4)(a) A person seeking a slot machine occupational license, or renewal thereof, shall make application on forms prescribed by the division and include payment of the

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appropriate application fee. Initial and renewal applications for slot machine occupational licenses shall contain all the

information the division, by rule, may determine is required to ensure eligibility.

(b) The division shall establish, by rule, a schedule for the annual renewal of slot machine occupational licenses.

(c) Pursuant to rules adopted by the division, any person may apply for and, if qualified, be issued an occupational license valid for a period of 3 years upon payment of the full occupational license fee for each of the 3 years for which the license is issued. The occupational license shall be valid during its specified term at any slot machine facility where slot machine gaming is authorized to be conducted.

(d) The slot machine occupational license fee for initial application and annual renewal shall be determined by rule of the division but shall not exceed $50 for a general or professional occupational license for an employee of the slot machine licensee or $1,000 for a business occupational license for nonemployees of the licensee providing goods or services to the slot machine licensee. License fees for general occupational licensees shall be paid for by the slot machine licensee. Failure to pay the required fee shall be grounds for disciplinary action by the division against the slot machine licensee but shall not be considered a violation of this chapter or rules of the division by the general occupational licensee or a prohibition against the initial issuance or the renewal of the general occupational license.

(5) If the state gaming commission or other similar regulatory authority of another state or jurisdiction extends

to the division reciprocal courtesy to maintain disciplinary control, the division may:

(a) Deny an application for or revoke, suspend, or place conditions or restrictions on a license of a person or

entity who has been refused a license by any other state gaming commission or similar authority; or

(b) Deny an application for or suspend or place conditions on a license of any person or entity who is under suspension or has unpaid fines in another jurisdiction.

(6)(a) The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the division governing the conduct of persons connected with slot machine gaming. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character, or has had a slot machine gaming license revoked by this state or any other jurisdiction for an offense related to slot machine gaming.

(b) The division may deny, declare ineligible, or revoke any occupational license if the applicant for such license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is

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related to gambling or bookmaking as contemplated in s. 849.25.

(7) Fingerprints for all slot machine occupational license applications shall be taken in a manner approved by the division and shall be submitted to the Department of Law Enforcement and the Federal Bureau of Investigation for a level II criminal records check upon initial application and

every 5 years thereafter. The division may by rule require an annual or less frequent records check not to exceed every 5 years of all renewal applications for a slot machine occupational license. The cost of processing fingerprints and conducting a records check shall be borne by the applicant.

(8) All moneys collected pursuant to this section shall be deposited into the Pari-mutuel Wagering Trust Fund.

551.108 Prohibited relationships.--

(1) A person employed by or performing any function on behalf of the division shall not:

(a) Be an officer, director, owner, or employee of any person or entity licensed by the division.

(b) Have or hold any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

(2) A manufacturer or distributor of slot machines shall not enter into any contract with a slot machine licensee which provides for any revenue sharing of any kind or nature which is, directly or indirectly, calculated on the basis of a percentage of slot machine revenues. Any maneuver, shift, or device whereby this provision is violated shall be a violation of this chapter and shall render any such agreement void.

(3) A manufacturer or distributor of slot machines or any equipment necessary for the operation of slot machines or

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an officer, director, or employee of any such manufacturer or distributor shall not have any ownership or financial interest in a slot machine license or in any business owned by the slot machine licensee.

551.109 Prohibited acts.--

(1) Except as otherwise provided by law and in addition to any other penalty, any person who intentionally makes or causes to be made or aids, assists, or procures another to make a false statement in any report, disclosure,

application, or any other document required under this chapter or any rule adopted under this chapter is subject to an administrative fine or civil penalty of up to $10,000.

(2) Except as otherwise provided by law and in addition to any other penalty, any person who possesses a slot machine without the license required by this chapter or who possesses a slot machine at any location other than at the slot machine licensee facility is subject to an administrative fine or civil penalty of up to $10,000.

(3) Except as otherwise provided by law and in addition to any other penalty, any person who intentionally excludes, or takes any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine activity is subject to an administrative fine or civil penalty of up to $25,000.

(4) Any person who, with intent to manipulate the outcome, payoff, or operation of a slot machine by physical tampering, or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or involving other means, manipulates the outcome, payoff, or operation of a slot

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machine commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) All penalties imposed and collected must be deposited into the Pari-mutuel Wagering Trust Fund in the department.

551.110 Illegal devices.--Notwithstanding any provision of law to the contrary, no slot machine manufactured, sold, distributed, possessed, or operated according to the provisions of this chapter shall be considered unlawful.

551.111 Exclusions of certain persons.--

(1) In addition to the power to exclude certain

persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any facility of a slot machine licensee any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or gaming facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over the gaming in such other state.

(2) This section shall not be construed to abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

(3) The division may authorize any person who has been ejected or excluded from a facility of a slot machine licensee in this state or another state to attend a facility of a slot machine licensee in this state upon a finding that the

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attendance of such person at a facility of a slot machine licensee would not be adverse to the public interest or to the integrity of the industry; however, this section shall not be construed to abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

551.112 Minors prohibited from playing slot machines.--

(1) A slot machine licensee or agent or employee of a slot machine licensee shall not:

(a) Allow a person who has not attained 21 years of age to play any slot machine.

(b) Allow a person who has not attained 21 years of age access to the designated slot machine gaming area of a facility of a slot machine licensee.

(c) Allow a person who has not attained 21 years of age to be employed in any position allowing or requiring access to the designated slot machine gaming area of a facility of a slot machine licensee.

(2) No person licensed under this chapter, or any agent or employee of a licensee under this chapter, shall intentionally allow a person who has not attained 21 years of age to play or operate a slot machine or have access to the designated slot machine area of a facility of a slot machine licensee.

(3) The eligible facility shall post clear and conspicuous signage within the designated slot machine gaming areas that states the following:

THE PLAYING OF SLOT MACHINES BY PERSONS
UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW
(SECTION 551.112, FLORIDA STATUTES).
PROOF OF AGE MAY BE REQUIRED AT ANYTIME

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A PERSON IS WITHIN THIS AREA.

551.113 Designated slot machine gaming areas.--

(1) A slot machine licensee may make available for play slot machines within its designated slot machine gaming areas.

(2) A slot machine licensee shall not allow any automated teller machine or similar device designed to provide credit or dispense cash to be located on the property of the facilities of the slot machine licensee.

(3) A slot machine licensee shall not make any loan or provide credit or advance cash to enable a person to play a slot machine.

(4) The slot machine operator shall display pari-mutuel races or games within the designated slot machine gaming areas and offer within the designated slot machine gaming areas the ability for patrons to engage in pari-mutuel wagering on live and simulcast races conducted or offered to

patrons of the eligible facility.

(5) No complimentary alcoholic beverages shall be served to patrons within the designated slot machine gaming areas.

(6) The slot machine operator shall offer training to employees on responsible gaming and shall work with the compulsive gambling treatment program within the Mental Health Program Office of the Department of Children and Family Services to recognize problem gaming situations and to implement responsible gaming programs and practices.

(7) The division shall require the posting of signs in the designated slot machine gaming areas warning of the risks and dangers of gambling, showing the odds of winning, and informing patrons of the toll-free telephone number available

to provide information and referral services regarding compulsive or problem gambling.

(8) The division shall establish standards of approval for the physical layout and construction of any facility or building devoted to slot machine operations. The standards shall require that the slot machine gaming area be connected to and contiguous within the operation of the live gaming facility. It is the intent of the Legislature that each facility:

(a) Possess superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(b) Have adequate motor vehicle parking facilities to satisfy patron requirements.

(c) Have a physical layout and location that facilitates access to the pari-mutuel portion of the facility.

551.114 Days and hours of operation.--Slot machine gaming areas may be open 365 days a year. The slot machine

gaming areas may be open for a maximum of 16 hours per day.

551.116 Penalties.--The division may revoke or suspend any license issued under this chapter upon the willful violation by the licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a license, the division may impose a civil penalty against the licensee for a violation of this chapter or any rule adopted by the division. Except as otherwise provided in this chapter, the penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited into the Pari-mutuel Wagering Trust Fund in the department.

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551.117 Compulsive gambling program.--The division may contract for provision of services related to the prevention and treatment of compulsive and addictive gambling. The terms of any contract for the provision of such services shall include accountability standards that must be met by any private provider. The failure of any private provider to meet any material terms of the contract, including the accountability standards, shall constitute a breach of contract or grounds for nonrenewal. The division may consult with the Department of the Lottery in the development of the program and the development and analysis of any procurement for contractual services for its compulsive or addictive gambling prevention and treatment program. The compulsive or addictive gambling prevention and treatment program shall be funded from the annual nonrefundable regulatory fee provided for in this section. The licensee must pay to the division an annual nonrefundable regulatory fee of $100 per slot machine, on July 1, of each year, which shall be deposited into the Pari-mutuel Wagering Trust Fund.

551.118 Catering license.--A slot machine retailer is entitled to a caterer's license pursuant to s. 565.02 on days in which the pari-mutuel facility is open to the public for

slot machine game play as authorized by this chapter.

551.119 Rulemaking.--

(1) The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(2) In order to expedite the licensing requirements of this chapter, the division may adopt emergency rules pursuant to s. 120.54(4). The Legislature finds that such emergency rules are necessary for the preservation of the rights and

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welfare of the people in order to provide additional funds to the benefit of the public. Therefore, in adopting such emergency rules, the division need not make the findings required by s. 120.54(4)(a).

551.120 Conduct of referendum election for slot machines.--

(1) Any person who possesses the qualifications prescribed by s. 23, Art. X of the State Constitution may apply to the division for a license to conduct slot machine operations under this chapter. Applications for a license to conduct slot machine operations shall be subject to the provisions of this chapter. Such license does not authorize any operation of slot machines until approved by the majority of electors participating in a referendum election in the county in which the applicant proposes to conduct slot machine activities.

(2) Each referendum held under the provisions of this section shall be held in accordance with the provisions of chapters 97-106, except as otherwise provided in this chapter. A referendum may be held for more than one licensee for slot machine operation in a given county if the written applications for each such licensee under s. 551.121 are filed simultaneously or are otherwise filed within the times specified by said provision to allow the conduct of a single

referendum. The expense of such referendum shall be borne by the licensee or licensees requesting the referendum. For purposes of this section, the expense of conducting a referendum is the incremental expense in excess of routine operating expenses that are incurred by the governing body, the supervisor of elections, and other essential governmental entities in conducting the election. If the referendum is

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being held at the request of more than one licensee, each applicant shall be responsible for an equal share of the expense.

551.121 Elections for ratification of slot machine licenses.--

(1) The holder of any license to conduct slot machine operations may have the question of whether that slot machine license will be ratified or rejected submitted to the electors of the county designated in s. 23, Art. X of the State Constitution. Such question shall be submitted to the electors for approval or rejection at a special, primary, or general election. The licensee shall present a written application to the governing body of the county that requests a referendum election in that county pursuant to s. 551.120 and this section, accompanied by a certified copy of the license granted by the division. Within 30 days after receipt of the application and license, the governing body shall order a special referendum election. The election shall be scheduled for no sooner than 21 days nor more than 90 days from the date on which it is ordered. Provided, the referendum election will be held in conjunction with the primary election if the application is received within not more than 90 nor less than 60 days of such election or in conjunction with the general election if the application is received not more than 90 nor less than 60 days prior to that election. The governing body shall give notice of the referendum election by publishing notice once each week for 2 consecutive weeks in one or more

newspapers of general circulation in the county.

(2)(a) Once the slot machine license has been issued, the licensee shall have a period of 2 years in which to request a referendum election pursuant to this section or such

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license shall become void and shall be cancelled. If the majority of the electors voting on the question of ratification or rejection of the slot machine licenses vote for such ratification, such license shall become effective immediately, and the holder of the license may conduct slot machine operations upon complying with the other provision of this chapter. If the majority of electors voting on the question of ratification or rejection of any slot machine licenses ratify the license, such license shall become effective, and the licensee shall pay to the division within 10 days the license fee set out in this chapter.

(b) If the majority of electors voting on the question of ratification or rejection of any slot machine licenses reject the ratification of the license, such license shall become void. The governing board of the county shall immediately certify the results of the election to the division.

Section 3. (1) Sixty-four full-time equivalent positions are authorized and the sums of $4,792,259 in recurring and $4,036,486 in nonrecurring funds are hereby appropriated from the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for the purpose of carrying out all regulatory activities provided herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Department of Business and Professional Regulation submits an expenditure plan for approval to the Executive Office of the Governor, and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section

216.177, Florida Statutes.

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(2) The sums of $2,634,349 in recurring and $1,814,916 in nonrecurring funds are hereby appropriated from the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for transfer to the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, and any other responsibilities as provided for herein. Fifty-seven full-time equivalent positions are authorized and the sums of $2,634,349 in recurring and $1,814,916 in nonrecurring funds are hereby appropriated from the Operating Trust Fund in the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, an any other responsibilities as provided for herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Department of Law Enforcement submits an expenditure plan for approval to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(3) The sums of $608,118 in recurring and $24,498 in nonrecurring funds are hereby appropriated from the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for transfer to the Office of the State Attorney, 17th Judicial Circuit, for the purpose of prosecution of offenses associated with gaming operations. Ten full-time equivalent positions are authorized and the sums of $608,118 in recurring and $24,498 in nonrecurring funds are hereby appropriated from the Grants and Donations Trust Fund in the Office of the State Attorney, 17th Judicial Circuit, for the purpose of prosecution of offenses associated with

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gaming operations. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Office of the State Attorney, 17th Judicial Circuit, submits an expenditure plan for approval to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(4) The sum of $1 million is hereby appropriated from the Pari-mutuel Wagering Trust Fund from revenues received pursuant to section 551.117, Florida Statutes, in the Department of Business and Professional Regulation for contract services related to the prevention and treatment of compulsive and addictive gambling.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR CS/CS Senate Bill 1174

The initial, one-time licensing fee for slot facilities is increased from $1 million to $4 million to pay for the regulatory costs of the Department of Business and Professional Regulation (DBPR), Florida Department of Law Enforcement (FDLE), and the 17th Circuit State Attorney's Office.

DBPR is required to contract for a compulsive gambling prevention and treatment program. A fee of $100 per slot machine is assessed to fund the program.

Appropriations and new positions are provided for DBPR, FDLE, and the 17th Circuit State Attorney's Office to meet the workload requirements of this bill. The funds must be held in reserve and released on the recommendation of the Governor and the approval of the Legislative Budget Commission pursuant to s. 216.177, Florida Statutes. Funds are also appropriated for the compulsive gambling prevention and treatment program.

A condition of licensure as a slot facility is changed from a requirement that the facility conduct as many live races or games as in 2002 or 2003 to a requirement that the facility conduct a full schedule of live races or games, as defined in 550.002(11).

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

TAB 6

Florida Senate - 2005 SENATOR AMENDMENT

Bill No. HB 1901, 2nd Eng.

Barcode 873066

CHAMBER ACTION

Senate	House
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05/06/2005 08:16 PM	.
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Senators Jones, Geller, and Posey moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Effective July 1, 2005, subsection (6) of section 550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.--

(6)(a) It is the intent of the Legislature that animals that participate in races in this state on which pari-mutuel wagering is conducted and animals that are bred and trained in this state for racing be treated humanely, both on and off racetracks, throughout the lives of the animals.

(b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being

Florida Senate - 2005 SENATOR AMENDMENT

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Barcode 873066

destroyed.

(c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.

(d) A conviction of cruelty to animals pursuant to s. 828.12 involving a racing animal constitutes a violation of this chapter.

(e) The division shall maintain accurate records and statistics regarding injuries incurred by greyhounds that race in this state. The division shall adopt rules requiring the reporting of injuries incurred by greyhounds while racing in this state, including schooling races. Such reports must include:

1. The greyhound's registered name and right and left ear tattoo numbers.

2. The name, business address, and telephone number of the greyhound owner, trainer, and kennel operator.

3. The color, weight, and sex of the greyhound.

4. The specific type of injury, the cause of the injury, the estimated recovery time, and the location of the injury on the greyhound.

5. Where the injury occurred, whether on a racing track or in another area.

6. If the injury occurred while the greyhound was racing, the racetrack where the injury occurred; the distance, grade, race, and post position when the injury occurred; and the weather conditions, time, temperature, and track condition at the time of the injury.

7. A certification by the racetrack veterinarian that

the form is correct.

(f) The division shall maintain accurate records and statistics regarding the disposition of greyhounds that participate in racing in this state. The division shall adopt rules requiring the reporting of the disposition of greyhounds that race in this state, including schooling races. As used in the reporting requirement, the term "disposition" means death, transfer to another jurisdiction, retirement, adoption, sale, or donation for medical research or another purpose. Such reports must include:

1. The greyhound's registered name and right and left ear tattoo numbers; the name, business address, and telephone number of the greyhound owner, trainer, and kennel operator; and the name and address of the race track where the greyhound last raced prior to disposition.

2. If the greyhound was transferred to another track, the name and address of the track that received the greyhound and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of that track.

3. If the greyhound was retired for breeding, the name and address of the facility that received the greyhound and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of that facility.

4. If the greyhound was adopted or placed for adoption, the name and address of the person that received the greyhound and, if applicable, the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of the adoption facility.

5. If the greyhound was euthanized, the name, address, professional title, professional affiliation of the person performing the euthanasia, method of euthanasia, and reason the greyhound was euthanized rather than adopted.

6. If the greyhound was sold or donated, the name of the person to whom the greyhound was sold or donated, and if donated, the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound on behalf of the donee.

7. If the disposition of the greyhound does not fit into any of the above categories, the name of the person to whom the greyhound was transferred, and the name, business address, telephone number, and driver's license number and state of issuance of the person who received the greyhound.

8. Certification by the owner, trainer, and kennel operator that the disposition forms are correct.

(g) The division shall maintain injury and disposition records for 7 years.

(h) In addition to other penalties imposed by law, a person who knowingly makes a false statement on an injury or

disposition form commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who knowingly makes a false statement on an injury or disposition form on a second or subsequent occasion commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Chapter 551, Florida Statutes, consisting of sections 551.101, 551.102, 551.103, 551.104, 551.105, 551.106, 551.107, 551.108, 551.109, 551.110, 551.111, 551.112, 551.113, 551.114, 551.116, 551.117, 551.118, 551.119, 551.120, and 551.121, is created to read:

CHAPTER 551

SLOT MACHINES

551.101 Slot machine gaming authorized.--Any existing, licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the State Constitution which has conducted live racing or games during calendar years 2002 and 2003 may possess slot machines and conduct slot machine gaming at the location where the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit provided a majority of voters in a countywide referendum have approved the possession of slot machines at such facility in the respective county. Notwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess and conduct slot machine gaming or to participate in slot machine gaming described in this chapter.

551.102 Definitions.--As used in this chapter, the term:

(1) "Central control computer" means a central site computer controlled and accessible by the division to which all slot machines at a gaming facility communicate for the purposes of auditing capacity; real-time information retrieval of the details of any financial event that occurs in the operation of a slot machine, including, but not limited to, coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure; daily collection of taxes, and remote machine activation and disabling of slot machines.

(2) "Designated slot machine gaming area" means the

areas of an eligible facility, which may include any addition,

alteration, or new structure located on the premises described in the pari-mutuel permit issued by the division for the conduct of pari-mutuel wagering, in which slot machine gaming may be conducted in accordance with the provisions of this chapter.

(3) "Distributor" means any person that sells, leases, or offers, or otherwise provides, distributes, or services, any slot machine or associated equipment for use or play of slot machines in this state. A manufacturer may be a distributor within the state.

(4) "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(5) "Eligible facility" means any existing licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the State Constitution which has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county.

(6) "Independent testing laboratory" means a laboratory of national reputation which is demonstrably competent and qualified to scientifically test and evaluate slot machines for compliance with this chapter and to otherwise perform the functions assigned to it in this chapter. An independent testing laboratory shall not be owned or controlled by a licensee. The use of an independent testing laboratory for any purpose related to the conduct of slot machine gaming by a licensee under this chapter shall be made from a list of one or more laboratories approved by the division.

(7) "Manufacturer" means any person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs, or otherwise makes modifications to any slot machine

or associated equipment for use or play of slot machines in this state for gaming purposes. A manufacturer may be a distributor within the state.

(8) "Progressive system" means a computerized system linking slot machines in one or more licensed facilities within this state and offering one or more common progressive payouts based on the amounts wagered.

(9) "Slot machine" means any mechanical or electrical contrivance, terminal, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. A slot machine:

(a) May use spinning reels or video displays or both.

(b) May or may not dispense coins, tickets, or tokens to winning patrons.

(c) May use an electronic credit system for receiving wagers and making payouts.

(d) May use a progressive system.

The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24), and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

(10) "Slot machine license" means a license issued by the division authorizing an slot machine licensee to place and operate slot machines as required by the provisions of this chapter and the rules.

(11) "Slot machine licensee" means a pari-mutuel permitholder who holds a license issued by the division pursuant to this chapter which authorizes such person to possess a slot machine within facilities specified in s. 23,

Art. X of the State Constitution and allows slot machine gaming.

(12) "Slot machine operator" means a person employed or contracted by the owner of an eligible facility to conduct slot machine gaming at that eligible facility.

(13) "Slot machine owner" means a person who holds a material interest in the slot machines.

(14) "Slot machine revenues" means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

551.103 Powers and duties.--

(1) The division shall adopt, pursuant to the provisions of ss. 120.536(1) and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules shall include:

(a) Procedures for applying for a license and renewal

of a license.

(b) Procedures for establishing technical requirements in addition to the qualifications that are necessary to receive a slot machine license or slot machine occupational license.

(c) Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this chapter.

(d) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machines through the central control computer that shall allow the division and the Florida Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee, as required by the division or the Florida Department of Law Enforcement and shall provide the division and the Florida Department of Law Enforcement with the ability to monitor on a real-time basis at any time wagering patterns, payouts, tax collection, and compliance with any rules adopted by the division for the regulation and control of slot machines operated under this section. Such continuous and complete access on a real-time basis at any time shall include the ability to immediately

suspend play on particular slot machines if monitoring of the computer operating system indicates possible tampering or manipulation of those slot machines or the entire operation if the tampering or manipulation is of the computer operating system itself.

(e) Procedures for requiring each licensee at his or her own cost and expense to supply the division with a bond having the penal sum not to exceed $2 million payable to the

Governor and his or her successors in office for the licensee's first year of slot machine operations to cover incidental tax collections. Any bond shall be issued by a surety or sureties to be approved by the division and the Chief Financial Officer, conditioned to faithfully make the payments to the Chief Financial Officer in his or her capacity as treasurer of the division. The licensee shall be required to keep its books and records and make reports as provided in this chapter and to conduct its slot machine operations in conformity with this chapter and all other provisions of law. The division may review the bond for adequacy and require adjustments each fiscal year. Such bond shall be separate and distinct from the bond required in s. 550.125.

(f) Procedures for requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records, required by this chapter or determined by the division to be necessary to the proper implementation and enforcement of this chapter.

(g) Procedures for requiring that the payout percentage of a slot machine shall be no less than 85 percent per facility.

(2) The division shall conduct such investigations as the division determines necessary to fulfill its responsibilities under the provisions of this chapter.

(3) The division, the Department of Law Enforcement, and local law enforcement agencies shall have concurrent jurisdiction to investigate criminal violations of this chapter and may investigate any other criminal violation of law occurring on the facilities of a slot machine licensee, and such investigations may be conducted in conjunction with the appropriate state attorney. The division and its employees

and agents shall have such other law enforcement powers as specified in ss. 943.04 and 943.10.

(4)(a) The division, the Department of Law Enforcement, and local law enforcement agencies shall have unrestricted access to the slot machine licensee facility at all times and shall require of each slot machine licensee strict compliance with the laws of this state relating to the transaction of such business. The division, the Department of Law Enforcement, and local law enforcement agencies:

1. May inspect and examine premises where slot machines are offered for play.

2. May inspect slot machines and related equipment and supplies.

(b) In addition, the division:

1. May collect taxes, assessments, fees, and penalties.

2. May deny, revoke, suspend, or place conditions on the license of a person who violates any provision of this chapter or rule adopted pursuant thereto.

(5) The division shall revoke or suspend the license of any person who is no longer qualified or who is found, after receiving a license, to have been unqualified at the time of application for the license.

(6) Nothing in this section shall be construed to:

(a) Prohibit the Department of Law Enforcement or any law enforcement authority whose jurisdiction includes a slot machine licensee facility from conducting criminal investigations occurring on the facilities of the slot machine licensee;

(b) Restrict access to the slot machine licensee facility by the Department of Law Enforcement or any local law

enforcement authority whose jurisdiction includes the slot machine licensee facility; or

(c) Restrict access to information and records necessary to the investigation of criminal activity that is contained within the slot machine licensee facility by the Department of Law Enforcement or local law enforcement

authorities.

551.104 License to conduct slot machine gaming.--

(1) Upon application and a finding by the division after investigation that the application is complete and the applicant is qualified and payment of the initial license fee, the division shall issue a license to conduct slot machine gaming in the designated slot machine gaming area of the slot machine licensee's facility. Once licensed, slot machine gaming may be conducted subject to the requirements of this chapter and rules adopted pursuant thereto.

(2) An application may be approved by the division only after the voters of the county where the applicant's facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county as specified in s. 23, Art. X of the State Constitution.

(3) A slot machine license may be issued only to a licensed pari-mutuel permitholder, and slot machine gaming may be conducted only at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities.

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(a) Continue to be in compliance with this chapter.

(b) Continue to be in compliance with chapter 550,

where applicable, and maintain the pari-mutuel permit and license in good standing pursuant to the provisions of chapter 550. Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility shall be entitled within 60 days after the effective date of this act to amend its 2005-2006 license issued by the Division of Pari-mutuel Wagering and shall be granted the requested changes in its authorized performances pursuant to such amendment. The Division of Pari-mutuel Wagering shall issue a new license to the eligible facility to effectuate an amendment.

(c) Conduct no less than the greater number of live races or games which were conducted at that pari-mutuel facility in calendar year 2002 or calendar year 2003. However, a permitholder's failure to conduct such number of live races or games in any year shall be reduced by the number

of such races or games which cannot be conducted due to the direct result of fire, war, or other disaster or event beyond the ability of the permitholder to control.

(d)1. Upon approval of any changes relating to the pari-mutuel permit by the division, be responsible for providing appropriate current and accurate documentation on a timely basis to the division in order to continue the slot machine license in good standing.

2. Changes in ownership or interest of a slot machine gaming license of 5 percent or more of the stock or other evidence of ownership or equity in the slot machine license or any parent corporation or other business entity that in any way owns or controls the slot machine license shall be approved by the division prior to such change, unless the owner is an existing holder of that license who was previously

approved by the division. Changes in ownership or interest of a slot machine license of less than 5 percent shall be reported to the division within 20 days after the change. The division may then conduct an investigation to ensure that the license is properly updated to show the change in ownership or interest. No reporting is required if the person is holding five percent or less equity or securities of a corporate owner of the slot machine licensee which has its securities registered pursuant to s. 12 of the security exchange act of 1934, 15. U.S.C. ss. 78a-78kk, and if such corporation or entity files with the United States Securities and Exchange Commission the reports required by s. 13 of that act or if the securities of the corporation or entity are regularly traded on an established securities market in the United States.

(e) Allow unrestricted access and right of inspection by the division to facilities of a slot machine licensee in which any activity relative to the conduct of slot machine gaming is conducted.

(f) Submit a security plan, including a slot machine floor plan, location of security cameras, and the listing of security equipment that is capable of observing and electronically recording activities being conducted in the designated slot machine gaming area.

(g) The slot machine licensee shall create and file with the division a written policy for:

1. Creating opportunities to purchase from vendors in

this state;

2. Creating opportunities to purchase from minority vendors;

3. Creating opportunities for employment of residents of this state;

4. Creating opportunities for employment of minorities; and

5. Ensuring that opportunities for employment are offered on an equal non-discriminatory basis.

The slot machine licensee shall use the internet-based job listing system of the Agency for Workforce Innovation in advertising employment opportunities.

(5) A slot machine license is not transferable.

(6) A slot machine licensee shall keep and maintain permanent daily records of its slot machine operation and shall maintain such records for a period of not less than 5 years. These records shall include all financial transactions and contain sufficient detail to determine compliance with the requirements of this section. All records shall be available for audit and inspection by the division, the Department of Law Enforcement, or other law enforcement agencies during the licensee's regular business hours. The information required in such records shall be determined by division rule.

(7) A slot machine licensee shall file with the division a report containing the required records of such slot machine operation. A slot machine licensee shall file such report monthly. The required reports shall be submitted on forms prescribed by the division and shall be due at the same time as the monthly pari-mutuel reports are due to the Division of Pari-mutuel Wagering, and the reports shall be deemed public records once filed.

(8) A slot machine licensee shall file with the division an audit of the receipt and distribution of all slot machine revenues provided by an independent certified public accountant verifying compliance with all statutes and

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regulations imposed by this chapter and the rules promulgated hereunder. The audit shall include verification of compliance with all statutes and regulations regarding all required records of slot machine operations. Such audit shall be filed within 60 days after the completion of the permitholder's pari-mutuel meet.

(9) The division may share any information with the Department of Law Enforcement or any other law enforcement agency having jurisdiction over slot machine gaming or pari-mutuel activities. Any law enforcement agency having jurisdiction over slot machine gaming or pari-mutuel activities may share any information obtained or developed by it with the division.

551.105 Slot machine license renewal.--

(1) Slot machine licenses shall be renewed annually. The application for renewal shall contain all revisions to the information submitted in the prior year's application which is necessary to maintain such information as both accurate and current.

(2) The applicant for renewal shall attest that any information changes do not affect the applicant's qualifications for license renewal.

(3) Upon determination by the division that the application for renewal is complete and qualifications have been met, including payment of the renewal fee, the slot machine license shall be renewed annually.

551.106 License fee; tax rate.--

(1) Upon approval of the application for a slot machine license, the licensee must pay to the division a license fee of $4 million. The license fee shall be paid annually upon renewal of the slot machine license and shall be

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deposited into the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for the regulation of slot machine gaming under this chapter. These payments shall be accounted for separately for taxes or fees paid pursuant to the provisions of ch. 550.

(b) Prior to January 1, 2006, the division shall evaluate the license fee and shall make recommendations to the President of the Senate and the Speaker of the House of Representatives. The recommendations shall focus on the

optimum level of slot machine license fees or a combination of fees in order to properly support the slot machine regulatory program.

(2) TAX ON SLOT MACHINE REVENUES.

(a) Within each fiscal year the tax rate on slot machine revenues on each facility shall be:

1. Thirty percent on revenue of $150 million or less;

2. Thirty-five percent on revenue greater than $150 million, but less than or equal to $300 million; and

3. Forty percent on all revenue greater than $300 million.

(b) The tax shall be collected on a daily basis and deposited into the Pari-Mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for immediate transfer to the Educational Enhancement Trust Fund in the Department of Education. Any interest earnings on the tax revenues shall also be transferred to the Educational Enhancement Trust Fund.

(c) The division shall notify the eligible facility concerning the appropriate tax rate to apply to the slot machine revenues.

(3) PAYMENT PROCEDURES.--Tax payments shall be

remitted daily, as determined by rule of the division. The slot machine licensee shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month which shall show all slot machine activities for the preceding calendar month and such other information as may be required by the division.

(4) FAILURE TO PAY TAX; PENALTIES.--A slot machine licensee who fails to make tax payments as required under this section is subject to an administrative penalty of up to $1,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected shall be deposited into the Pari Mutuel Wagering Trust Fund in the Department of Business and Professional Regulation. If any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may suspend, revoke, or fail to renew the license of the slot machine licensee.

(5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR FAIL TO RENEW THE LICENSE.--In addition to the penalties

imposed under subsection (4), any willful or wanton failure by a slot machine licensee to make payments of the tax constitutes sufficient grounds for the division to suspend, revoke, or fail to renew the license of the slot machine licensee.

(6) SUBMISSION OF FUNDS.--The division may require slot machine licensees to remit taxes, fees, fines, and assessments by electronic funds transfer.

551.107 Occupational license required; application; fee.--

(1) The individuals and entities that are licensed under this section require heightened state scrutiny,

including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a criminal records check.

(2)(a) The following licenses shall be issued to persons or entities having access to the designated slot machine gaming area or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories:

1. General occupational licenses for general employees, food service, maintenance, and other similar service and support employees having access to the designated slot machine gaming area. Service and support employees with a current pari-mutuel occupational license issued pursuant to chapter 550 and a current background check are not required to submit to an additional background check for a slot machine occupational license as long as the pari-mutuel occupational license remains in good standing.

2. Professional occupational licenses for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, floor supervisor, security personnel, or any other similar position of oversight of gaming operations.

3. Business occupational licenses for any slot machine management company or slot machine business associated with slot machine gaming or a person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees or any person

not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot

machine or other slot machine equipment.

(b) Slot machine occupational licenses are not transferable.

(3) A slot machine licensee shall not employ or otherwise allow a person to work at a slot machine facility unless such person holds a valid occupational license. A slot machine licensee shall not contract or otherwise do business with a business required to hold a slot machine occupational license unless the business holds such a license. A slot machine licensee shall not employ or otherwise allow a person to work in a supervisory or management professional level at a slot machine facility unless such person holds a valid occupational license.

(4)(a) A person seeking a slot machine occupational license, or renewal thereof, shall make application on forms prescribed by the division and include payment of the appropriate application fee. Initial and renewal applications for slot machine occupational licenses shall contain all the information the division, by rule, may determine is required to ensure eligibility.

(b) The division shall establish, by rule, a schedule for the annual renewal of slot machine occupational licenses.

(c) Pursuant to rules adopted by the division, any person may apply for and, if qualified, be issued an occupational license valid for a period of 3 years upon payment of the full occupational license fee for each of the 3 years for which the license is issued. The occupational license shall be valid during its specified term at any slot machine facility where slot machine gaming is authorized to be conducted.

(d) The slot machine occupational license fee for

initial application and annual renewal shall be determined by rule of the division but shall not exceed $50 for a general or

professional occupational license for an employee of the slot machine licensee or $1,000 for a business occupational license for nonemployees of the licensee providing goods or services to the slot machine licensee. License fees for general occupational licensees shall be paid for by the slot machine licensee. Failure to pay the required fee shall be grounds for disciplinary action by the division against the slot machine licensee but shall not be considered a violation of this chapter or rules of the division by the general occupational licensee or a prohibition against the initial issuance or the renewal of the general occupational license.

(5) If the state gaming commission or other similar regulatory authority of another state or jurisdiction extends to the division reciprocal courtesy to maintain disciplinary control, the division may:

(a) Deny an application for or revoke, suspend, or place conditions or restrictions on a license of a person or entity who has been refused a license by any other state gaming commission or similar authority; or

(b) Deny an application for or suspend or place conditions on a license of any person or entity who is under suspension or has unpaid fines in another jurisdiction.

(6)(a) The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the division governing the conduct of persons connected with slot machine gaming. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has

been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character, or has had a slot machine gaming license revoked by this state or any other jurisdiction for an offense related to slot machine gaming.

(b) The division may deny, declare ineligible, or revoke any occupational license if the applicant for such

license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking as contemplated in s. 849.25.

(7) Fingerprints for all slot machine occupational license applications shall be taken in a manner approved by the division and shall be submitted to the Department of Law Enforcement and the Federal Bureau of Investigation for a level II criminal records check upon initial application and every 5 years thereafter. All persons as specified in s. 550.1815(1)(a), or employed by or working within a licensed premise, excluding division employees and law enforcement officers assigned by their employing agencies to work within the premises as part of their official duties, are required to not be convicted of any disqualifying criminal offenses as established by division rule. To facilitate the required review of criminal history information, each person listed in this subsection is required to submit fingerprints to the

division. The division shall forward the fingerprints to the Department of Law Enforcement for state processing. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(a) Fingerprints shall be taken in a manner approved by the division and shall be submitted electronically to the Department of Law Enforcement and the Federal Bureau of Investigation for a criminal records check upon initial taking, or as required thereafter by rule of the division, and every 5 years thereafter. Licensees are required to provide necessary equipment approved by the Department of Law Enforcement to facilitate such electronic submission. The division may by rule require annual criminal history record checks of all persons required to submit to the fingerprint-based criminal records check. The division requirements under this subsection shall be instituted in consultation with the Department of Law Enforcement.

(b) The cost of processing fingerprints and conducting a records check shall be borne by the licensee or the person being checked. The Department of Law Enforcement may invoice the division for the fingerprints submitted each month.

(c) Beginning February 1, 2006, all fingerprints submitted to the Department of Law Enforcement and required by this section shall be retained by the Department of Law Enforcement in a manner provided by rule of the Department of Law Enforcement and entered into the statewide automated fingerprint identification system as authorized by s. 943.05(2)(b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint

identification system pursuant to s. 943.051.

(d) Beginning February 1, 2006, the Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (c). Any arrest record that is identified with the retained fingerprints of a person subject to the criminal history screening requirements of this section shall be reported to the division. Each racetrack or fronton is required to participate in this search process by payment of an annual fee to the division which shall forward the payment to the Department of Law Enforcement. The division shall inform the Department of Law Enforcement of any change in the license status of licensees whose fingerprints are retained under subparagraph (c). The amount of the annual fee to be imposed upon each racetrack or fronton for performing these searches and the procedures for the retention of licensee fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. The fee shall be borne by the person fingerprinted or the licensee.

(e) Every 5 years following issuance of a license or upon conducting a criminal history check as required herein, each person who is so licensed or who was so checked must meet the screening requirements as established by the division rule, at which time the division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a criminal records check. If, for any reason following initial licensure or criminal history check, the fingerprints of a person who is licensed or who was checked are not retained by the Department of Law Enforcement

as provided in this section, the person must file a complete set of fingerprints with the division. Upon submission of fingerprints for this purpose, the division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a criminal records check, and the fingerprints shall be retained by the Department of Law Enforcement as authorized herein. The cost of the state and national criminal history check required herein shall be borne by the licensee or the person fingerprinted. Under penalty of perjury, each person who is licensed or who is checked as required by this section must agree to inform the division within 48 hours if he or she is convicted of any disqualifying offense while he or she is so licensed.

(8) All moneys collected pursuant to this section shall be deposited into the Pari-mutuel Wagering Trust Fund.

551.108 Prohibited relationships.--

(1) A person employed by or performing any function on behalf of the division shall not:

(a) Be an officer, director, owner, or employee of any person or entity licensed by the division.

(b) Have or hold any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

(2) A manufacturer or distributor of slot machines shall not enter into any contract with a slot machine licensee which provides for any revenue sharing of any kind or nature which is, directly or indirectly, calculated on the basis of a percentage of slot machine revenues. Any maneuver, shift, or device whereby this provision is violated shall be a violation of this chapter and shall render any such agreement void.

(3) A manufacturer or distributor of slot machines or any equipment necessary for the operation of slot machines or an officer, director, or employee of any such manufacturer or distributor shall not have any ownership or financial interest in a slot machine license or in any business owned by the slot

machine licensee.

(4) No licensee or any entity conducting business on or within a licensed slot operation shall employ any employee of a law enforcement or regulatory agency that has jurisdiction over the licensed premises in an off-duty or secondary employment capacity for work within any enclosure or area containing a slot machine or in any restricted area that supports slot machine operations that requires an occupational license to enter. If approved by the employee's primary employing agency, off-duty or secondary employment not prohibited by this section may be permitted.

551.109 Prohibited acts.--

(1) Except as otherwise provided by law and in addition to any other penalty, any person who intentionally makes or causes to be made or aids, assists, or procures another to make a false statement in any report, disclosure, application, or any other document required under this chapter or any rule adopted under this chapter is subject to an administrative fine or civil penalty of up to $10,000.

(2) Except as otherwise provided by law and in addition to any other penalty, any person who possesses a slot machine without the license required by this chapter or who possesses a slot machine at any location other than at the slot machine licensee facility is subject to an administrative fine or civil penalty of up to $10,000.

(3) Any person who intentionally excludes, or takes

any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine activity or any person who by trick or sleight of hand performance, or by a fraud or fraudulent scheme, or device, for himself or herself or for another, wins or attempts to win money or property or a combination thereof or reduces a losing wager or attempts to reduce a losing wager in connection with slot machine gaming commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or. 775.084.

(4) Any person who, with intent to manipulate the outcome, payoff, or operation of a slot machine by physical tampering, or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or involving other means, manipulates the outcome, payoff, or operation of a slot

machine commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Theft of any slot machine proceeds or of property belonging to the slot machine operator or eligible facility by an employee of the operator or facility or by an employee of a person, firm, or entity that has contracted to provide services to the establishment constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) Any law enforcement officer or slot machine operator who has probable cause to believe that a violation of subsections (3),(4), or (5) has been committed by a person and that the officer or operator can recover the lost proceeds from such activity by taking the person into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the person into custody on the premises and

detain the person in a reasonable manner and for a reasonable period of time. If the operator takes the person into custody, a law enforcement officer shall be called to the scene immediately. The taking into custody and detention by a law enforcement officer or slot machine operator, if done in compliance with this subsection, does not render such law enforcement officer or slot machine operator criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(b) Any law enforcement officer may arrest, either on or off the premises and without warrant, any person if there is probable cause to believe that person has violated subsections (3),(4), or (5).

(c) Any person who resists the reasonable effort of a law enforcement officer or slot machine operator to recover the lost slot machine proceeds that the law enforcement officer or slot machine operator had probable cause to believe had been stolen from the eligible facility, and who is subsequently found to be guilty of violating subsections (3),(4), or (5), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless such person did not know or did not have reason to know that the person seeking to recover the lost proceeds was a law enforcement officer or slot machine operator. For purposes of this section, the charge of theft and the charge of resisting

apprehension may be tried concurrently.

(7) All penalties imposed and collected must be deposited into the Pari-mutuel Wagering Trust Fund in the department.

551.110 Legal devices.--Notwithstanding any provision of law to the contrary, no slot machine manufactured, sold,

distributed, possessed, or operated according to the provisions of this chapter shall be considered unlawful.

551.111 Exclusions of certain persons.--

(1) In addition to the power to exclude certain persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any facility of a slot machine licensee any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or gaming facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over the gaming in such other state.

(2) This section shall not be construed to abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

(3) The division may authorize any person who has been ejected or excluded from a facility of a slot machine licensee in this state or another state to attend a facility of a slot machine licensee in this state upon a finding that the attendance of such person at a facility of a slot machine licensee would not be adverse to the public interest or to the integrity of the industry; however, this section shall not be construed to abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

551.112 Minors prohibited from playing slot machines.--

(1) A slot machine licensee or agent or employee of a

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Barcode 873066

slot machine licensee shall not:

(a) Allow a person who has not attained 21 years of age to play any slot machine.

(b) Allow a person who has not attained 21 years of age access to the designated slot machine gaming area of a facility of a slot machine licensee.

(c) Allow a person who has not attained 21 years of age to be employed in any position allowing or requiring access to the designated slot machine gaming area of a facility of a slot machine licensee.

(2) No person licensed under this chapter, or any agent or employee of a licensee under this chapter, shall intentionally allow a person who has not attained 21 years of age to play or operate a slot machine or have access to the designated slot machine area of a facility of a slot machine licensee.

(3) The eligible facility shall post clear and conspicuous signage within the designated slot machine gaming areas that states the following:

THE PLAYING OF SLOT MACHINES BY PERSONS
UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW
(SECTION 551.112, FLORIDA STATUTES).
PROOF OF AGE MAY BE REQUIRED AT ANYTIME
A PERSON IS WITHIN THIS AREA.

551.113 Designated slot machine gaming areas.--

(1) A slot machine licensee may make available for play slot machines within its designated slot machine gaming areas.

(2) A slot machine licensee shall not allow any automated teller machine or similar device designed to provide credit or dispense cash to be located on the property of the

facilities of the slot machine licensee.

(3) A slot machine licensee shall not make any loan or provide credit or advance cash to enable a person to play a slot machine.

(4) The slot machine licensee shall display pari-mutuel races or games within the designated slot machine gaming areas and offer within the designated slot machine gaming areas the ability for patrons to engage in pari-mutuel

wagering on live, intertrack, and simulcast races conducted or offered to patrons of the eligible facility.

(5) No complimentary alcoholic beverages shall be served to patrons within the designated slot machine gaming areas.

(6) The slot machine licensee shall offer training to employees on responsible gaming and shall work with the compulsive or addictive gambling prevention program to recognize problem gaming situations and to implement responsible gaming programs and practices.

(7) Each slot machine approved for use in this state shall be protected against manipulation or tampering to affect the random probabilities of winning plays, and the centralized computer management system shall enable the division or the Department of Law Enforcement to suspend play upon suspicion of any manipulation or tampering. When play has been suspended on any slot machine, the division or the Department of Law Enforcement may examine any slot machine to determine whether the machine has been tampered with or manipulated and whether the machine should be returned to operation.

(8) No outcome of play or continuation of play may be manipulated, through programming or otherwise, to display a result that appears to be a near win, gives the impression

that the player is getting close to a win, or in any way gives a false impression that the chance to win is improved by another play; however, this subsection does not apply to general promotional enticements such as graphic displays and sound effects that do not falsely imply that the chance of winning improves by continued play.

(9) The division shall require the posting of signs in the designated slot machine gaming areas warning of the risks and dangers of gambling, showing the odds of winning, and informing patrons of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling.

(10) The division shall establish standards of approval for the physical layout and construction of any facility or building devoted to slot machine operations. The standards shall require that the slot machine gaming area be connected to and contiguous within the operation of the live gaming facility. It is the intent of the Legislature that

each facility:

(a) Possess superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(b) Have adequate motor vehicle parking facilities to satisfy patron requirements.

(c) Have a physical layout and location that facilitates access to the pari-mutuel portion of the facility.

(11) The permitholder shall provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machines operations. The division shall adopt rules setting the criteria for adequate

space, configuration, and location and needed electronic and technological requirements for office space required by this subsection.

551.114 Days and hours of operation.--Slot machine gaming areas may be open 365 days a year. The slot machine gaming areas may be open for a maximum of 16 hours per day.

551.116 Penalties.--The division may revoke or suspend any license issued under this chapter upon the willful violation by the licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a license, the division may impose a civil penalty against the licensee for a violation of this chapter or any rule adopted by the division. Except as otherwise provided in this chapter, the penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited into the Pari-mutuel Wagering Trust Fund in the department.

551.117 Compulsive or addictive gambling prevention program.--The division may, subject to competitive bidding, contract for provision of services related to the prevention of compulsive and addictive gambling. The terms of any contract for the provision of such services shall include accountability standards that must be met by any private provider. The failure of any private provider to meet any material terms of the contract, including the accountability standards, shall constitute a breach of contract or grounds for nonrenewal. The division may consult with the Department of the Lottery in the development of the program and the

development and analysis of any procurement for contractual services for the compulsive or addictive gambling prevention program. The compulsive or addictive gambling prevention

program shall be funded from the annual nonrefundable regulatory fee provided for in s. 551.106.

551.118 Catering license.--A slot machine licensee is entitled to a caterer's license pursuant to s. 565.02 on days in which the pari-mutuel facility is open to the public for slot machine game play as authorized by this chapter.

551.119 Rulemaking.--

(1) The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(2) In order to expedite the licensing requirements of this chapter, the division may adopt emergency rules pursuant to s. 120.54. The Legislature finds that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The Legislature further finds that the unique nature of legalized gambling requires, from time to time, that the division respond as quickly as is practicable to changes in the marketplace and changes in technology that may affect legalized gambling conducted at pari-mutuel facilities in this state. Therefore, in adopting such emergency rules, the division need not make the findings required by s. 120.54(4)(a).

551.120 Conduct of referendum election for slot machines.--

(1) Any person who possesses the qualifications prescribed by s. 23, Art. X, State Constitution may, apply to the division for a license to conduct slot machine operations under this chapter. Applications for a license to conduct slot machine operations shall be subject to the provisions of this chapter. Such license does not authorize any operation of slot

machines until approved by the majority of electors

participating in a referendum election in the county approving the conduct of slot machine activities.

(2) Each referendum held under the provisions of this section shall be held in accordance with the provisions of chapter 97-106, except as otherwise provided in this chapter. The expense of such referendum shall be borne equally by all eligible facilities. For purposes of this section, the expense of conducting a referendum is the incremental expense in excess of routine operating expenses that are incurred by the governing body, the supervisor of elections, and other essential governmental entities in conducting the election.

551.121 Elections for ratification of slot machine licenses.--

(1) The question as to whether slot machine operations shall be approved or rejected pursuant to s. 23, Art. X, State Constitution shall be submitted to the electors for approval or rejection at a special, primary, or general election. Any eligible facility may present a written application to the governing body of the county that requests a referendum election in that county pursuant to s. 551.120 and this section. Within 30 days of receipt of the application the governing body shall order a special referendum election. Set election shall be scheduled for no sooner than 21 days nor more than 90 days from the date on which it is ordered. Provided, the referendum election will be held in conjunction with the primary election if the application is received within not more than 90 nor less than 60 days of such election or in conjunction with the general election if the application is received not more than 90 nor less than 60 days prior to that election. The governing body shall give notice of the

referendum election by publishing notice once each week for 2 consecutive weeks in one or more newspapers of general circulation in the county.

(2)(a) If the majority of the electors voting on the questions of ratification or rejection of the slot machine operations vote for such ratification, slot machine operations shall become effective immediately, and the eligible facility thereof may conduct slot machine operations upon complying with the other provisions of this chapter. If the majority of electors voting on the question of ratification or rejection of any slot machine operations ratify the slot machine

operations, such eligible facility shall be eligible for licensing, and the licensee shall pay to the division within 10 days the license fee set out in this chapter.

(b) If the majority of electors voting on the question of ratification or rejection of any slot machine operations reject the ratification of the slot machine operations, such eligible facility shall not be entitled to conduct slot machine operations. The governing board of the county shall immediately certify the results of the election to the division.

Section 3. Office of Program Policy Analysis and Government Accountability; Program Evaluation.--

(a) Before January 1, 2008, and annually thereafter, the Office of Program Policy Analysis and Government Accountability shall conduct a performance audit of the division, and slot machine licensees relating to the provisions of this chapter. The audit shall assess the implementation and outcomes of activities under this chapter. At a minimum, the audit shall address:

1. Performance of the slot machine licensees in

operating slot machine gaming and complying with the rules under this chapter.

2. Economic activity generated through slot machine operations by the slot machine licensees.

3. The expenditure of slot machine taxes and whether these expenditures supplemented or supplanted public eduction dollars.

(b) A report of each audit's findings and recommendations shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 4. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.--

(1) It is unlawful:

(a)~~(1)~~ To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the

operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) ~~(2)~~ To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or

thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(2) Pursuant to section 2 of that certain chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce", approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177, the State of Florida, acting by and through its duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such chapter of Congress, declare and proclaim that any county of the State of Florida, within which slot machine gaming is authorized pursuant to chapter 551 is exempt from the provisions of section 2 of that certain chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce", designated U.S.C. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to chapter 551, the registering, recording, and labeling of which have been duly done by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that certain chapter of the Congress of the United States entitled, "An act to prohibit transportation of gaming devices in interstate and foreign commerce", approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177, shall be deemed legal shipments thereof into any such county provided the destination of such shipments is to a eligible facility as

defined s. 551.102.

Section 5. Subsections (1) and (2) of section 895.02, Florida Statutes, are amended to read:

895.02 Definitions.--As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

4. Section 414.39, relating to public assistance fraud.

5. Section 440.105 or s. 440.106, relating to workers' compensation.

6. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs.

8. Part IV of chapter 501, relating to telemarketing.

9. Chapter 517, relating to sale of securities and investor protection.

10. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

11. Chapter 550, relating to jai alai frontons.

12. Section 551.109, relating to slot machine gaming.

13.~~12.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

14.~~13.~~ Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

15.~~14.~~ Chapter 562, relating to beverage law enforcement.

16.~~15.~~ Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

17.~~16.~~ Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

18.~~17.~~ Chapter 687, relating to interest and usurious practices.

19.~~18.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

20.~~19.~~ Chapter 782, relating to homicide.

21.~~20.~~ Chapter 784, relating to assault and battery.

22.~~21.~~ Chapter 787, relating to kidnapping.

23.~~22.~~ Chapter 790, relating to weapons and firearms.

24.~~23.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.

25.~~24.~~ Chapter 806, relating to arson.

26.~~25.~~ Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

27.~~26.~~ Chapter 812, relating to theft, robbery, and related crimes.

28.~~27.~~ Chapter 815, relating to computer-related crimes.

29.~~28.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

30.~~29.~~ Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

31.~~30.~~ Section 827.071, relating to commercial sexual exploitation of children.

32.~~31.~~ Chapter 831, relating to forgery and counterfeiting.

33.~~32.~~ Chapter 832, relating to issuance of worthless checks and drafts.

34.~~33.~~ Section 836.05, relating to extortion.

35.~~34.~~ Chapter 837, relating to perjury.

36.~~35.~~ Chapter 838, relating to bribery and misuse of public office.

37.~~36.~~ Chapter 843, relating to obstruction of justice.

38.~~37.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

39.~~38.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

40.~~39.~~ Chapter 874, relating to criminal street gangs.

41.~~40.~~ Chapter 893, relating to drug abuse prevention and control.

42.~~41.~~ Chapter 896, relating to offenses related to financial transactions.

43.~~42.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

44.~~43.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C.. s. 1961(1).

(2) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

2. Chapter 550, relating to jai alai frontons.

3. Section 551.109, relating to slot machine gaming.

4.~~3.~~ Chapter 687, relating to interest and usury.

5.~~4.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

Section 6. The Legislature has exclusive authority over the conduct of all wagering occurring at a slot machine facility in this state. Only the division and other authorized state agencies shall administer chapter 551, Florida Statutes,

and regulate the slot machine gaming industry, including operation of slot machine facilities, games, slot machines, and centralized computer management systems authorized in chapter 551 and the rules adopted by the division.

Section 7. Any tribal-state compact relating to slot machine or other class III gaming activities which is entered into by an Indian tribe in this state and the Governor

pursuant to the Indian Gaming Regulatory Act, 25 U.S.C.. ss. 2701 et seq., must be conditioned upon ratification by the Legislature.

Section 8. (1) Fifty-four full-time equivalent positions are authorized and the sums of $3,798,199 in recurring and $3,951,431 in nonrecurring funds are hereby appropriated from the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for the purpose of carrying out all regulatory activities provided herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the Department of Business and Professional Regulation submits an expenditure plan for approval to the Executive Office of the Governor, and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(2) The sums of $2,634,349 in recurring and $1,814,916 in nonrecurring funds are hereby appropriated from the Pari-mutuel Wagering Trust Fund in the Department of Business and Professional Regulation for transfer to the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, and any other responsibilities as provided for herein. Fifty-seven full-time equivalent positions are authorized and the sums of $2,634,349 in recurring and $1,814,916 in nonrecurring funds are hereby appropriated from the Operating Trust Fund in the Department of Law Enforcement for the purpose of investigations, intelligence gathering, background investigations, an any other responsibilities as provided for herein. The Executive Office of the Governor shall place these funds and positions in reserve until such time as the

Department of Law Enforcement submits an expenditure plan for approval to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission in accordance with the provisions of section 216.177, Florida Statutes.

(4) The sum of $1 million is hereby appropriated from the Pari-mutuel Wagering Trust Fund from revenues received pursuant to section 551.117, Florida Statutes, in the Department of Business and Professional Regulation for contract services related to the prevention of compulsive and addictive gambling.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to pari-mutuel wagering; amending s. 550.2415, F.S.; requiring the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation to maintain certain records regarding injuries and the disposition of greyhounds that race in this state; providing guidelines and requirements for injury and disposition report forms; providing for the adoption of rules; providing penalties;

creating ch. 551, F.S.; implementing s. 23, Art. X of the State Constitution; authorizing slot machines and slot machine gaming within certain pari-mutuel facilities located in Miami-Dade and Broward Counties upon approval by a local referendum; providing definitions; providing powers and duties of the Division of

Pari-mutuel Wagering in the Department of Business and Professional Regulation; clarifying the authority of the Department of Law Enforcement and local law enforcement agencies; providing for licensure to conduct slot machine gaming; providing for slot machine licensure renewal; providing for a license fee, and tax rate; providing for payment procedures; providing penalties; requiring occupational licenses and application fees; providing penalties; prohibiting certain business relationships; prohibiting certain acts and providing penalties; providing an exception to prohibitions relating to slot machines; providing for the exclusion of certain persons from facilities; prohibiting minors under 21 years of age from playing slot machines; designating slot machine gaming areas; prohibiting automated teller machines on the property of a slot machine licensee; providing for days and hours of operation; providing penalties; providing a compulsive or addictive gambling prevention program; providing for a fee; providing for a caterer's license;

providing for rulemaking; providing for the conduct of a referendum election for slot machines; providing for elections for ratification of slot machine licensing; providing for program evaluations; amending s. 849.15, F.S.; providing for transportation of certain gaming devices in accordance with federal law; amending s. 895.02, F.S.; providing that specified violations related to slot machine gaming constitute racketeering activity; providing that certain debt incurred in violation of specified provisions relating to slot machine gaming constitutes unlawful debt; providing for preemption; providing ratification of tribal-state compacts by the Legislature; authorizing additional positions and providing appropriations; providing

effective dates.

Florida Senate - 2005 SENATOR AMENDMENT

Bill No. HB 1901, 2nd Eng.

Barcode 224858

CHAMBER ACTION

Senate	House
1a/AD/2R	
05/06/2005 08:15 PM	

Senator Posey moved the following **amendment to amendment** (873066):

Senate Amendment

On page 17, lines 16-20, delete those lines

and insert:

1. Thirty-five percent on revenue of $125 million or less;

2. Forty percent on revenue greater than $125 million, but less than or equal to $250 million;

3. Forty-five percent on revenue greater than $250 million, but less than or equal to $500 million; and

4. Fifty-five percent on all revenue greater than $500 million.

TAB 7

Direct Shipping of Wine

September 2, 2005

Status Update

The issue of direct-to-consumer wine sales has been the subject of much debate and litigation in several states. In Florida, the direct shipping of wine by out-of-state wineries to Florida consumers is illegal and punishable as a third degree felony. In contrast to its treatment of out-of-state wineries, Florida allows in-state Farm Wineries to ship their product directly to consumers.

Granholm v. Heald

A recently decided U. S. Supreme Court case, *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005), has called into question the validity of Florida's prohibition against out-of-state direct shipping of wine. In its decision, the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The Court struck down laws in Michigan and New York, similar to Florida law, allowing in-state wineries to make deliveries to consumers, but prohibiting out-of-state wineries from making such deliveries. The Court ruled that either all sales of alcohol must be face-to-face transactions, or a permit system must be developed to allow for wine deliveries from out-of-state. The Court's decision addresses only wine producers. The Court specifically distinguished other products and the opinion does not specifically open the door for out-of-state retailers to ship direct. The issues of nexus and state jurisdiction were not specifically addressed by the Court.

Three key holdings in the ruling:

- States cannot allow in-state wine producers to make direct sales not available to out-of-state wine producers;
- States cannot require residency of wine producers in order to compete on equal terms; and
- States cannot require reciprocal shipping privileges for wine producers from other states.

The Three Tier System of alcohol beverage distribution utilized by Florida and many other states was held to be "unquestionably legitimate" as long as state laws satisfy the key holdings of *Granholm.* The Court made a clear distinction between laws regarding direct sales by wine producers as distinguished from the state's regulation within its borders of the resale of alcohol beverages.

Bainbridge v. Turner

At a status conference held by the court on May 25, 2005, the State conceded that based upon the *Granholm* decision the two statutes in question in *Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM, ss. 561.54(1)-(2) and 561.545(1), F.S., were unconstitutional.

Subsequently, an August 5, 2005 Order issued by U. S. District Court Judge James Whittemore in Tampa, found the two statutes in question in *Bainbridge* violated the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

> "Florida's direct shipment scheme, codified in ss. 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor [sic]. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*."

While the Order enjoined the State from enforcing the two statutes in question, it remains unclear whether direct wine shipments are allowed under the statutory scheme remaining in place, e.g. the three-tier distribution system. Initial statements from the Department of Business and Professional Regulation[1] indicate that direct to consumer shipments will remain unlawful.

The Order does not address the constitutionality of these statutes with regard to other alcoholic beverages such as beer and spirits.

[1] Ruling muddies legality of wine shipping, the *Miami Herald*, August 10, 2005.

TAB 8

PRESENTATION BY RICHARD M. BLAU, CHAIRMAN, AMERICAN BAR ASSOCIATION'S COMMITTEE ON BEVERAGE ALCOHOL PRACTICE, ON THE HISTORY OF THE THREE-TIER SYSTEM OF ALCOHOL BEVERAGE DISTRIBUTION AND AN OVERVIEW OF THE ISSUES ARISING FROM THE RECENT SUPREME COURT DECISION ON DIRECT SHIPPING.

Brief Biography of Richard M. Blau

Mr. Blau is Chairman of the American Bar Association's Committee on Beverage Alcohol Practice.

Mr. Blau received his B.A. from Brandeis University, and his J.D. from the Georgetown University Law Center, where he served as the Associate Editor for Topics of the *Georgetown Law Journal*. An elected member of The American Law Institute, Mr. Blau also is a member of The Florida Bar, The Bar Association of the District of Columbia, the American Bar Association, and the Federal Bar Association. Mr. Blau is an industry member of the National Conference of State Liquor Administrators (NCSLA), and lectures on Twenty First Amendment issues at the NCSLA's annual meetings. He also has addressed annual meetings of the National Alcohol Beverage Control Association (NABCA) and the National Liquor Law Enforcement Association (NLLEA).

A shareholder with the Florida-based law firm of GrayRobinson P.A., Mr. Blau heads the firm's Alcohol Beverage and Food Department, focusing on the rules and regulations that govern the marketing, sale and consumption of distilled spirits, wine, beer and other licensed beverages. Before joining GrayRobinson, Mr. Blau was a partner at Holland & Knight LLP, where he created the firm's original Alcohol Beverage Law practice. Mr. Blau devotes a substantial portion of his professional efforts to trade regulation, litigation, and dispute resolution involving the hospitality industry. He has industry-specific experience in the areas of administrative practice and regulatory compliance, advertising and promotional law, importation matters, and supplier/distribution relations.

TAB 9

WRITTEN COMMENTS FROM RICHARD M. BLAU, CHAIRMAN, ABA COMMITTEE ON BEVERAGE ALCOHOL PRACTICE, WILL BE SUBMITTED PRIOR TO THE COMMITTEE MEETING.

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS
03–1116 *v.*
ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER
03–1120 *v.*
ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS
03–1274 *v.*
EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE KENNEDY delivered the opinion of the Court.

These consolidated cases present challenges to state laws regulating the sale of wine from out-of-state wineries to consumers in Michigan and New York. The details and

mechanics of the two regulatory schemes differ, but the object and effect of the laws are the same: to allow in-state wineries to sell wine directly to consumers in that State but to prohibit out-of-state wineries from doing so, or, at the least, to make direct sales impractical from an economic standpoint. It is evident that the object and design of the Michigan and New York statutes is to grant in-state wineries a competitive advantage over wineries located beyond the States' borders.

We hold that the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, §8, cl. 3, and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.

I

Like many other States, Michigan and New York regulate the sale and importation of alcoholic beverages, including wine, through a three-tier distribution system. Separate licenses are required for producers, wholesalers, and retailers. See FTC, Possible Anticompetitive Barriers to E-Commerce: Wine 5–7 (July 2003) (hereinafter FTC Report), available at http://www.ftc.gov/os/2003/07/winereport2.pdf (all Internet materials as visited May 11, 2005, and available in Clerk of Court's case file). The three-tier scheme is preserved by a complex set of overlapping state and federal regulations. For example, both state and federal laws limit vertical integration between tiers. *Id.*, at 5; 27 U. S. C. §205; see, *e.g.*, *Bainbridge* v. *Turner*, 311 F. 3d 1104, 1106 (CA11 2002). We have held previously that States can mandate a three-tier distribution scheme in the exercise of their authority under the

Twenty-first Amendment. *North Dakota* v. *United States,* 495 U. S. 423, 432 (1990); *id.*, at 447 (SCALIA, J., concurring in judgment). As relevant to today's cases, though, the three-tier system is, in broad terms and with refinements to be discussed, mandated by Michigan and New York only for sales from out-of-state wineries. In-state wineries, by contrast, can obtain a license for direct sales to consumers. The differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce.

This discrimination substantially limits the direct sale of wine to consumers, an otherwise emerging and significant business. FTC Report 7. From 1994 to 1999, consumer spending on direct wine shipments doubled, reaching $500 million per year, or three percent of all wine sales. *Id.*, at 5. The expansion has been influenced by several related trends. First, the number of small wineries in the United States has significantly increased. By some estimates there are over 3,000 wineries in the country, WineAmerica, The National Association of American Wineries, Wine Facts 2004, http://www.americanwineries.org/newsroom/winefacts04.htm, more than three times the number 30 years ago, FTC Report 6. At the same time, the wholesale market has consolidated. Between 1984 and 2002, the number of licensed wholesalers dropped from 1,600 to 600. Riekhof & Sykuta, Regulating Wine by Mail, 27 Regulation, No. 3, pp. 30, 31 (Fall 2004), available at http://www.cato.org/pubs/regulation/regv27n3/v27n3-3.pdf. The increasing winery-to-wholesaler ratio means that many small wineries do not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products. FTC Report 6. This has led many small wineries to rely on direct shipping to reach new markets. Technological improvements, in particular the ability of wineries to sell wine over the Internet, have helped make direct shipments an attractive sales channel.

Approximately 26 States allow some direct shipping of wine, with various restrictions. Thirteen of these States have reciprocity laws, which allow direct shipment from wineries outside the State, provided the State of origin affords similar nondiscriminatory treatment. *Id.*, at 7–8. In many parts of the country, however, state laws that prohibit or severely restrict direct shipments deprive consumers of access to the direct market. According to the Federal Trade Commission (FTC), "[s]tate bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine." *Id.*, at 3.

The wine producers in the cases before us are small wineries that rely on direct consumer sales as an important part of their businesses. Domaine Alfred, one of the plaintiffs in the Michigan suit, is a small winery located in San Luis Obispo, California. It produces 3,000 cases of wine per year. Domaine Alfred has received requests for its wine from Michigan consumers but cannot fill the orders because of the State's direct-shipment ban. Even if the winery could find a Michigan wholesaler to distribute its wine, the wholesaler's markup would render shipment through the three-tier system economically infeasible.

Similarly, Juanita Swedenburg and David Lucas, two of the plaintiffs in the New York suit, operate small wineries in Virginia (the Swedenburg Estate Vineyard) and California (the Lucas Winery). Some of their customers are tourists, from other States, who purchase wine while visiting the wineries. If these customers wish to obtain Swedenburg or Lucas wines after they return home, they will be unable to do so if they reside in a State with restrictive direct-shipment laws. For example, Swedenburg and Lucas are unable to fill orders from New York, the Nation's second-largest wine market, because of the limits that State imposes on direct wine shipments.

A

We first address the background of the suit challenging the Michigan direct-shipment law. Most alcoholic beverages in Michigan are distributed through the State's three-tier system. Producers or distillers of alcoholic beverages, whether located in state or out of state, generally may sell only to licensed in-state wholesalers. Mich. Comp. Laws Ann. §§436.1109(1), 436.1305, 436.1403, 436.1607(1) (West 2000); Mich. Admin. Code Rules 436.1705 (1990), 436.1719 (2000). Wholesalers, in turn, may sell only to in-state retailers. Mich. Comp. Laws Ann. §§436.1113(7), 436.1607(1) (West 2001). Licensed retailers are the final link in the chain, selling alcoholic beverages to consumers at retail locations and, subject to certain restrictions, through home delivery. §§436.1111(5), 436.1203(2)–(4).

Under Michigan law, wine producers, as a general matter, must distribute their wine through wholesalers. There is, however, an exception for Michigan's approximately 40 in-state wineries, which are eligible for "wine maker" licenses that allow direct shipment to in-state consumers. §436.1113(9) (West 2001); §§436.1537(2)–(3) (West Supp. 2004); Mich. Admin. Code Rule 436.1011(7)(b) (2003). The cost of the license varies with the size of the winery. For a small winery, the license is $25. Mich. Comp. Laws Ann. §436.1525(1)(d) (West Supp. 2004). Out-of-state wineries can apply for a $300 "outside seller of wine" license, but this license only allows them to sell to in-state wholesalers. §§436.1109(9) (West 2001), 436.1525(1)(e) (West Supp. 2004); Mich. Admin. Code Rule 436.1719(5) (2000).

Some Michigan residents brought suit against various state officials in the United States District Court for the Eastern District of Michigan. Domaine Alfred, the San Luis Obispo winery, joined in the suit. The plaintiffs contended that Michigan's direct-shipment laws discriminated

against interstate commerce in violation of the Commerce Clause. The trade association Michigan Beer & Wine Wholesalers intervened as a defendant. Both the State and the wholesalers argued that the ban on direct shipment from out-of-state wineries is a valid exercise of Michigan's power under §2 of the Twenty-first Amendment.

On cross-motions for summary judgment the District Court sustained the Michigan scheme. The Court of Appeals for the Sixth Circuit reversed. *Heald* v. *Engler,* 342 F. 3d 517 (2003). Relying on *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984), the court rejected the argument that the Twenty-first Amendment immunizes all state liquor laws from the strictures of the Commerce Clause, 342 F. 3d, at 524, and held the Michigan scheme was unconstitutional because the defendants failed to demonstrate the State could not meet its proffered policy objectives through nondiscriminatory means, *id.*, at 527.

B

New York's licensing scheme is somewhat different. It channels most wine sales through the three-tier system, but it too makes exceptions for in-state wineries. As in Michigan, the result is to allow local wineries to make direct sales to consumers in New York on terms not available to out-of-state wineries. Wineries that produce wine only from New York grapes can apply for a license that allows direct shipment to in-state consumers. N. Y. Alco. Bev. Cont. Law Ann. §76–a(3) (West Supp. 2005) (hereinafter N. Y. ABC Law). These licensees are authorized to deliver the wines of other wineries as well, §76–a(6)(a), but only if the wine is made from grapes "at least seventy-five percent the volume of which were grown in New York state," §3(20–a). An out-of-state winery may ship directly to New York consumers only if it becomes a licensed New York winery, which requires the establishment of "a branch factory, office or storeroom within the state of New York." §3(37).

Juanita Swedenburg and David Lucas, joined by three of their New York customers, brought suit in the Southern District of New York against the officials responsible for administering New York's Alcoholic Beverage Control Law seeking, *inter alia*, a declaration that the State's limitations on the direct shipment of out-of-state wine violate the Commerce Clause. New York liquor wholesalers and representatives of New York liquor retailers intervened in support of the State.

The District Court granted summary judgment to the plaintiffs. 232 F. Supp. 2d 135 (2002). The court first determined that, under established Commerce Clause principles, the New York direct-shipment scheme discriminates against out-of-state wineries. *Id.*, at 146–147. The court then rejected the State's Twenty-first Amendment argument, finding that the "[d]efendants have not shown that New York's ban on the direct shipment of out-of-state wine, and particularly the in-state exceptions to the ban, implicate the State's core concerns under the Twenty-first Amendment." *Id.*, at 148.

The Court of Appeals for the Second Circuit reversed. 358 F. 3d 223 (2004). The court "recognize[d] that the physical presence requirement could create substantial dormant Commerce Clause problems if this licensing scheme regulated a commodity other than alcohol." *Id.*, at 238. The court nevertheless sustained the New York statutory scheme because, in the court's view, "New York's desire to ensure accountability through presence is aimed at the regulatory interests directly tied to the importation and transportation of alcohol for use in New York," *ibid.* As such, the New York direct shipment laws were "within the ambit of the powers granted to states by the Twenty-first Amendment." *Id.*, at 239.

C

We consolidated these cases and granted certiorari on

the following question: "'Does a State's regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of §2 of the Twenty-first Amendment?'" 541 U. S. 1062 (2004).

For ease of exposition, we refer to the respondents from the Michigan challenge (Nos. 03–1116 and 03–1120) and the petitioners in the New York challenge (No. 03–1274) collectively as the wineries. We refer to their opposing parties—Michigan, New York, and the wholesalers and retailers—simply as the States.

II

A

Time and again this Court has held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.*, 511 U. S. 93, 99 (1994). See also *New Energy Co. of Ind.* v. *Limbach,* 486 U. S. 269, 274 (1988). This rule is essential to the foundations of the Union. The mere fact of nonresidence should not foreclose a producer in one State from access to markets in other States. *H. P. Hood & Sons, Inc.* v. *Du Mond,* 336 U. S. 525, 539 (1949). States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses. This mandate "reflect[s] a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma,* 441 U. S. 322, 325–326 (1979).

The rule prohibiting state discrimination against interstate commerce follows also from the principle that States should not be compelled to negotiate with each other regarding favored or disfavored status for their own citizens. States do not need, and may not attempt, to negotiate with other States regarding their mutual economic interests. Cf. U. S. Const., Art. I, §10, cl. 3. Rivalries among the States are thus kept to a minimum, and a proliferation of trade zones is prevented. See *C & A Carbone, Inc.* v. *Clarkstown,* 511 U. S. 383, 390 (1994) (citing The Federalist No. 22, pp. 143–145 (C. Rossiter ed. 1961) (A. Hamilton); Madison, Vices of the Political System of the United States, in 2 Writings of James Madison 362–363 (G. Hunt ed. 1901)).

Laws of the type at issue in the instant cases contradict these principles. They deprive citizens of their right to have access to the markets of other States on equal terms. The perceived necessity for reciprocal sale privileges risks generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution and, in particular, the Commerce Clause were designed to avoid. State laws that protect local wineries have led to the enactment of statutes under which some States condition the right of out-of-state wineries to make direct wine sales to in-state consumers on a reciprocal right in the shipping State. California, for example, passed a reciprocity law in 1986, retreating from the State's previous regime that allowed unfettered direct shipments from out-of-state wineries. Riekhof & Sykuta, 27 Regulation, No. 3, at 30. Prior to 1986, all but three States prohibited direct-shipments of wine. The obvious aim of the California statute was to open the interstate direct-shipping market for the State's many wineries. *Ibid.* The current patchwork of laws—with some States banning direct shipments altogether, others doing so only for out-of-state wines, and still others requiring reciprocity—is essentially the prod-

uct of an ongoing, low-level trade war. Allowing States to discriminate against out-of-state wine "invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause." *Dean Milk Co.* v. *Madison,* 340 U. S. 349, 356 (1951). See also *Baldwin* v. *G. A. F. Seelig, Inc.,* 294 U. S. 511, 521–523 (1935).

B

The discriminatory character of the Michigan system is obvious. Michigan allows in-state wineries to ship directly to consumers, subject only to a licensing requirement. Out-of-state wineries, whether licensed or not, face a complete ban on direct shipment. The differential treatment requires all out-of-state wine, but not all in-state wine, to pass through an in-state wholesaler and retailer before reaching consumers. These two extra layers of overhead increase the cost of out-of-state wines to Michigan consumers. The cost differential, and in some cases the inability to secure a wholesaler for small shipments, can effectively bar small wineries from the Michigan market.

The New York regulatory scheme differs from Michigan's in that it does not ban direct shipments altogether. Out-of-state wineries are instead required to establish a distribution operation in New York in order to gain the privilege of direct shipment. N. Y. ABC Law §§3(37), 96. This, though, is just an indirect way of subjecting out-of-state wineries, but not local ones, to the three-tier system. New York and those allied with its interests defend the scheme by arguing that an out-of-state winery has the same access to the State's consumers as in-state wineries: All wine must be sold through a licensee fully accountable to New York; it just so happens that in order to become a licensee, a winery must have a physical presence in the State. There is some confusion over the precise steps out-of-state wineries must take to gain access to the New York

market, in part because no winery has run the State's regulatory gauntlet. New York's argument, in any event, is unconvincing.

The New York scheme grants in-state wineries access to the State's consumers on preferential terms. The suggestion of a limited exception for direct shipment from out-of-state wineries does nothing to eliminate the discriminatory nature of New York's regulations. In-state producers, with the applicable licenses, can ship directly to consumers from their wineries. §§76–a(3), 76(4) (West Supp. 2005), and §77(2) (West 2000). Out-of-state wineries must open a branch office and warehouse in New York, additional steps that drive up the cost of their wine. §§3(37), 96 (West Supp. 2005). See also App. in No. 03–1274, pp. 159–160 (Affidavit of Thomas G. McKeon, General Counsel to the New York State Liquor Authority). For most wineries, the expense of establishing a bricks-and-mortar distribution operation in 1 State, let alone all 50, is prohibitive. It comes as no surprise that not a single out-of-state winery has availed itself of New York's direct-shipping privilege. We have "viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere." *Pike* v. *Bruce Church, Inc.,* 397 U. S. 137, 145 (1970). New York's in-state presence requirement runs contrary to our admonition that States cannot require an out-of-state firm "to become a resident in order to compete on equal terms." *Halliburton Oil Well Cementing Co.* v. *Reily,* 373 U. S. 64, 72 (1963). See also *Ward* v. *Maryland,* 12 Wall. 418 (1871).

In addition to its restrictive in-state presence requirement, New York discriminates against out-of-state wineries in other ways. Out-of-state wineries that establish the requisite branch office and warehouse in New York are still ineligible for a "farm winery" license, the license that provides the most direct means of shipping to New York

consumers. N. Y. ABC Law §76–a(5) ("No licensed farm winery shall manufacture or sell any wine not produced exclusively from grapes or other fruits or agricultural products grown or produced in New York state"). Out-of-state wineries may apply only for a commercial winery license. See §§3(37), 76. Unlike farm wineries, however, commercial wineries must obtain a separate certificate from the state liquor authority authorizing direct shipments to consumers, §77(2) (West 2000); and, of course, for out-of-state wineries there is the additional requirement of maintaining a distribution operation in New York. New York law also allows in-state wineries without direct-shipping licenses to distribute their wine through other wineries that have the applicable licenses. §76(5) (West Supp. 2005). This is another privilege not afforded out-of-state wineries.

We have no difficulty concluding that New York, like Michigan, discriminates against interstate commerce through its direct-shipping laws.

III

State laws that discriminate against interstate commerce face "a virtually *per se* rule of invalidity." *Philadelphia* v. *New Jersey,* 437 U. S. 617, 624 (1978). The Michigan and New York laws by their own terms violate this proscription. The two States, however, contend their statutes are saved by §2 of the Twenty-first Amendment, which provides:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The States' position is inconsistent with our precedents and with the Twenty-first Amendment's history. Section 2 does not allow States to regulate the direct shipment of

wine on terms that discriminate in favor of in-state producers.

A

Before 1919, the temperance movement fought to curb the sale of alcoholic beverages one State at a time. The movement made progress, and many States passed laws restricting or prohibiting the sale of alcohol. This Court upheld state laws banning the production and sale of alcoholic beverages, *Mugler* v. *Kansas,* 123 U. S. 623 (1887), but was less solicitous of laws aimed at imports. In a series of cases before ratification of the Eighteenth Amendment the Court, relying on the Commerce Clause, invalidated a number of state liquor regulations.

These cases advanced two distinct principles. First, the Court held that the Commerce Clause prevented States from discriminating against imported liquor. *Scott* v. *Donald,* 165 U. S. 58 (1897); *Walling* v. *Michigan,* 116 U. S. 446 (1886); *Tiernan* v. *Rinker,* 102 U. S. 123 (1880). In *Walling*, for example, the Court invalidated a Michigan tax that discriminated against liquor imports by exempting sales of local products. The Court held that States were not free to pass laws burdening only out-of-state products:

> "A discriminating tax imposed by a State operating to the disadvantage of the products of other States when introduced into the first mentioned State, is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States." 116 U. S., at 455.

Second, the Court held that the Commerce Clause prevented States from passing facially neutral laws that placed an impermissible burden on interstate commerce. *Rhodes* v. *Iowa,* 170 U. S. 412 (1898); *Vance* v. *W. A. Van-*

dercook Co., 170 U. S. 438 (1898); *Leisy* v. *Hardin*, 135 U. S. 100 (1890); *Bowman* v. *Chicago & Northwestern R. Co.*, 125 U. S. 465 (1888). For example, in *Bowman* v. *Chicago & Northwestern R. Co.*, 125 U. S. 465 (1888), the Court struck down an Iowa statute that required all liquor importers to have a permit. *Bowman* and its progeny rested in part on the since-rejected original-package doctrine. Under this doctrine goods shipped in interstate commerce were immune from state regulation while in their original package. As the Court explained in *Vance*,

> "the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding; that is to say, that the goods received by Interstate Commerce remain under the shelter of the Interstate Commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the state." 170 U. S., at 444–445.

Bowman reserved the question whether a State could ban the sale of imported liquor altogether. 125 U. S., at 499–500. Iowa responded to *Bowman* by doing just that but was thwarted once again. In *Leisy, supra,* the Court held that Iowa could not ban the sale of imported liquor in its original package.

Leisy left the States in a bind. They could ban the production of domestic liquor, *Mugler*, *supra*, but these laws were ineffective because out-of-state liquor was immune from any state regulation as long as it remained in its original package, *Leisy*, *supra*. To resolve the matter, Congress passed the Wilson Act (so named for Senator Wilson of Iowa), which empowered the States to regulate imported liquor on the same terms as domestic liquor:

> "That all fermented, distilled, or other intoxicating liq-

> uors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." Ch. 728, 26 Stat. 313 (codified at 27 U. S. C. §121).

By its own terms, the Wilson Act did not allow States to discriminate against out-of-state liquor; rather, it allowed States to regulate imported liquor only "to the same extent and in the same manner" as domestic liquor.

The Court confirmed this interpretation in *Scott, supra.* *Scott* involved a constitutional challenge to South Carolina's dispensary law, 1895 S. C. Acts p. 721, which required that all liquor sales be channeled through the state liquor commissioner. 165 U. S., at 92. The statute discriminated against out-of-state manufacturers in two primary ways. First, §15 required the commissioner to "purchase his supplies from the brewers and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere." 1895 S. C. Acts p. 732. Second, §23 of the statute limited the State's markup on locally produced wines to a 10-percent profit but provided "no such limitation of charge in the case of imported wines." 165 U. S., at 93. Based on these discriminatory provisions, the Court rejected the argument that the South Carolina dispensary law was authorized by the Wilson Act. *Id.,* at 100. It explained that the Wilson Act was "not intended to confer upon any State the power to discriminate injuri-

ously against the products of other States in articles whose manufacture and use are not forbidden, and which are therefore the subjects of legitimate commerce." *Ibid.* To the contrary, the Court said, the Wilson Act mandated "equality or uniformity of treatment under state laws," *ibid.,* and did not allow South Carolina to provide "an unjust preference" to its products "as against similar products of the other States," *id.,* at 101. The dissent also understood the validity of the dispensary law to turn in large part on §§15 and 23, but argued that even if these provisions were discriminatory the correct remedy was to sever them from the rest of the Act. *Id.,* at 104–106 (opinion of Brown, J.).

Although the Wilson Act increased the States' authority to police liquor imports, it did not solve all their problems. In *Vance* and *Rhodes*—two cases decided soon after *Scott*—the Court made clear that the Wilson Act did not authorize States to prohibit direct shipments for personal use. In *Vance*, the Court characterized *Scott* as embodying two distinct holdings: First, the South Carolina dispensary law "amount[ed] to an unjust discrimination against liquors, the products of other States." 170 U. S., at 442. This aspect of the *Scott* holding, which confirmed the Wilson Act's nondiscrimination principle, was based "on particular provisions of the law by which the discrimination was brought about." 170 U. S., at 442. Second, "in so far as the law then in question forbade the sending . . . of intoxicating liquors for the use of the person to whom it was shipped, the statute was repugnant to [the Commerce Clause]." *Ibid.* (citing *Scott,* 165 U. S. 58). See also 170 U. S., at 443 (distinguishing between the provisions at issue in *Scott* "which were held to operate a discrimination" and those which barred direct shipment for personal use).

This second holding, that consumers had the right to receive alcoholic beverages shipped in interstate commerce

for personal use, was only implicit in *Scott*. 165 U. S., at 78, 99–100. The Court expanded on this point, however, not only in *Vance* but again in *Rhodes*. *Rhodes* construed the Wilson Act narrowly to avoid interference with this right. The Act, the Court said, authorized States to regulate only the resale of imported liquor, not direct shipment to consumers for personal use. 170 U. S., at 421. Without a clear indication from Congress that it intended to allow States to ban such shipments, the *Rhodes* Court read the words "upon arrival" in the Wilson Act as authorizing "the power of the State to attach to an interstate commerce shipment," only after its arrival at the point of destination and delivery there to the consignee." *Id.*, at 426. See also *id.*, at 424; *Bridenbaugh* v. *Freeman-Wilson*, 227 F. 3d 848, 852 (CA7 2000). The Court interpreted the Wilson Act to overturn *Leisy* but leave *Bowman* intact. *Rhodes, supra,* at 423–424. The right to regulate did not attach until the liquor was in the hands of the customer. As a result, the mail-order liquor trade continued to thrive. Rogers, Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act, 4 Va. L. Rev. 353, 364–365 (1917).

After considering a series of bills in response to the Court's reading of the Wilson Act, Congress responded to the direct-shipment loophole in 1913 by enacting the Webb-Kenyon Act, 37 Stat. 699, 27 U. S. C. §122. See Rogers, *supra*, at 363–370. The Act, entitled "An Act Divesting intoxicating liquors of their interstate character in certain cases," provides:

> "That the shipment or transportation . . . of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State . . . into any other State . . . which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, pos-

> sessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State . . . is hereby prohibited." 37 Stat., at 699–700.

The constitutionality of the Webb-Kenyon Act itself was in doubt. *Vance* and *Rhodes* implied that any law authorizing the States to regulate direct shipments for personal use would be an unlawful delegation of Congress' Commerce Clause powers. Indeed, President Taft, acting on the advice of Attorney General Wickersham, vetoed the Act for this specific reason. S. Rep. No. 103, 63 Cong., 1st Sess., 3–6 (1913); 30 Op. Atty. Gen. 88 (1913). Congress overrode the veto and in *Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311 (1917), a divided Court upheld the Webb-Kenyon Act against a constitutional challenge.

The Court construed the Act to close the direct-shipment gap left open by the Wilson Act. States were now empowered to forbid shipments of alcohol to consumers for personal use, provided that the States treated in-state and out-of-state liquor on the same terms. *Id.*, at 321–322 (noting that the West Virginia law at issue in *Clark Distilling* "forbade the shipment into or transportation of liquor in the State whether from inside or out"). The Court understood that the Webb-Kenyon Act "was enacted simply to extend that which was done by the Wilson Act." *Id.*, at 324. The Act's purpose "was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws, and thus in effect afford a means by subterfuge and indirection to set such laws at naught." *Ibid.* The Court thus recognized that the Act was an attempt to eliminate the regulatory advantage, *i.e.* its immunity characteristic, afforded imported liquor under *Bowman* and *Rhodes*.

Michigan and New York now argue the Webb-Kenyon Act went even further and removed any barrier to discriminatory state liquor regulations. We do not agree. First, this reading of the Webb-Kenyon Act conflicts with that given the statute in *Clark Distilling*. *Clark Distilling* recognized that the Webb-Kenyon Act extended the Wilson Act to allow the States to intercept liquor shipments before those shipments reached the consignee. The States' contention that the Webb-Kenyon Act also reversed the Wilson Act's prohibition on discriminatory treatment of out-of-state liquors cannot be reconciled with *Clark Distilling's* description of the Webb-Kenyon Act's purpose—"simply to extend that which was done by the Wilson Act." 242 U. S., at 324. See also *McCormick & Co.* v. *Brown,* 286 U. S. 131, 140–141 (1932).

The statute's text does not compel a different result. The Webb-Kenyon Act readily can be construed as forbidding "shipment or transportation" only where it runs afoul of the State's generally applicable laws governing receipt, possession, sale, or use. Cf. *id.,* at 141 (noting that the Act authorized enforcement of "valid" state laws). At the very least, the Webb-Kenyon Act expresses no clear congressional intent to depart from the principle, unexceptional at the time the Act was passed and still applicable today, *Hillside Dairy Inc.* v. *Lyons,* 539 U. S. 59, 66 (2003), that discrimination against out-of-state goods is disfavored. Cf. *Western & Southern Life Ins. Co.* v. *State Bd. of Equalization of Cal.,* 451 U. S. 648, 652–653 (1981) (holding that the McCarran-Ferguson Act, 15 U. S. C. §1011 *et seq.*, removed all dormant Commerce Clause scrutiny of state insurance laws; 15 U. S. C. §1011 provides: "Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States").

Last, and most importantly, the Webb-Kenyon Act did not purport to repeal the Wilson Act, which expressly precludes States from discriminating. If Congress' aim in passing the Webb-Kenyon Act was to authorize States to discriminate against out-of-state goods then its first step would have been to repeal the Wilson Act. It did not do so. There is no inconsistency between the Wilson Act and the Webb-Kenyon Act sufficient to warrant an inference that the latter repealed the former. See *Washington* v. *Miller,* 235 U. S. 422, 428 (1914) (noting that implied repeals are disfavored). Indeed, this Court has twice noted that the Wilson Act remains in effect today. *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* 377 U. S. 324, 333, n. 11 (1964); *Department of Revenue* v. *James B. Beam Distilling Co.,* 377 U. S. 341, 345, n. 7 (1964). See 27 U. S. C. §121.

The Wilson Act reaffirmed, and the Webb-Kenyon Act did not displace, the Court's line of Commerce Clause cases striking down state laws that discriminated against liquor produced out of state. The rule of *Tiernan*, *Walling*, and *Scott* remained in effect: States were required to regulate domestic and imported liquor on equal terms. "[T]he intent of . . . the Webb-Kenyon Act . . . was to take from intoxicating liquor the protection of the interstate commerce laws in so far as necessary to deny them an advantage over the intoxicating liquors produced in the state into which they were brought, yet, [the Act does not] show an intent or purpose to so abdicate control over interstate commerce as to permit discrimination against the intoxicating liquor brought into one state from another." *Pacific Fruit & Produce Co.* v. *Martin,* 16 F. Supp. 34, 39–40 (WD Wash. 1936). See also Friedman, Constitutional Law: State Regulation of Importation of Intoxicating Liquor Under Twenty-first Amendment, 21 Cornell L. Q. 504, 509 (1936) ("The cases under the Webb-Kenyon Act uphold state prohibition and regulation in the exercise of the police power yet they clearly forbid laws which

discriminate arbitrarily and unreasonably against liquor produced outside of the state" (footnote omitted)).

B

The ratification of the Eighteenth Amendment in 1919 provided a brief respite from the legal battles over the validity of state liquor regulations. With the ratification of the Twenty-first Amendment 14 years later, however, nationwide Prohibition came to an end. Section 1 of the Twenty-first Amendment repealed the Eighteenth Amendment. Section 2 of the Twenty-first Amendment is at issue here.

Michigan and New York say the provision grants to the States the authority to discriminate against out-of-state goods. The history we have recited does not support this position. To the contrary, it provides strong support for the view that §2 restored to the States the powers they had under the Wilson and Webb-Kenyon Acts. "The wording of §2 of the Twenty-first Amendment closely follows the Webb-Kenyon and Wilson Acts, expressing the framers' clear intention of constitutionalizing the Commerce Clause framework established under those statutes." *Craig* v. *Boren,* 429 U. S. 190, 205–206 (1976) (footnote omitted).

The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.

Some of the cases decided soon after ratification of the Twenty-first Amendment did not take account of this history and were inconsistent with this view. In *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59, 62 (1936), for example, the Court rejected the argument that the Amendment did not authorize discrimination:

> "The plaintiffs ask us to limit this broad command [of §2]. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it."

The Court reaffirmed the States' broad powers under §2 in a series of cases, see *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401 (1938); *Indianapolis Brewing Co.* v. *Liquor Control Comm'n*, 305 U. S. 391 (1939); *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132 (1939); *Joseph S. Finch & Co.* v. *McKittrick*, 305 U. S. 395 (1939), and unsurprisingly many States used the authority bestowed on them by the Court to expand trade barriers. T. Green, Liquor Trade Barriers: Obstructions to Interstate Commerce in Wine, Beer, and Distilled Spirits 4, and App. I (1940) (stating in the wake of *Young's Market* that "[r]ivalries and reprisals have thus flared up").

It is unclear whether the broad language in *Young's Market* was necessary to the result because the Court also stated that "the case [did] not present a question of discrimination prohibited by the commerce clause." 299 U. S., at 62. The Court also declined, contrary to the approach we take today, to consider the history underlying the Twenty-first Amendment. *Id.*, at 63–64. This reluctance did not, however, reflect a consensus that such evidence was irrelevant or that prior history was unsupportive of the principle that the Amendment did not authorize discrimination against out-of-state liquors. There was ample opinion to the contrary. See, *e.g.*, *Young's Market Co.* v. *State Bd. of Equalization of Cal.*, 12 F. Supp. 140 (SD Cal. 1935), rev'd, 299 U. S. 59 (1936); *Pacific Fruit*

& Produce Co. v. *Martin, supra,* at 39; *Joseph Triner Corp.* v. *Arundel,* 11 F. Supp. 145, 146–147 (Minn. 1935); Friedman, *supra,* at 511–512; Note, Recent Cases, Twenty-first Amendment—Commerce Clause, 85 U. Pa. L. Rev. 322, 323 (1937); W. Hamilton, Price and Price Policies 426 (1938); Note, Legislation, Liquor Control, 38 Colum. L. Rev. 644, 658 (1938); Wiser & Arledge, Does the Repeal Empower a State to Erect Tariff Barriers and Disregard the Equal Protection Clause in Legislating on Intoxicating Liquors in Interstate Commerce? 7 Geo. Wash. L. Rev. 402, 407–409 (1939); de Ganahl, The Scope of Federal Power Over Alcoholic Beverages Since the Twenty-first Amendment, 8 Geo. Wash. L. Rev. 819, 822–828 (1940); Note, 55 Yale L. J. 815, 819–820 (1946).

Our more recent cases, furthermore, confirm that the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers.

C

The modern §2 cases fall into three categories.

First, the Court has held that state laws that violate other provisions of the Constitution are not saved by the Twenty-first Amendment. The Court has applied this rule in the context of the First Amendment, *44 Liquormart, Inc.* v. *Rhode Island,* 517 U. S. 484 (1996); the Establishment Clause, *Larkin* v. *Grendel's Den, Inc.,* 459 U. S. 116 (1982); the Equal Protection Clause, *Craig, supra,* at 204–209; the Due Process Clause, *Wisconsin* v. *Constantineau,* 400 U. S. 433 (1971); and the Import-Export Clause, *Department of Revenue* v. *James B. Beam Distilling Co.,* 377 U. S. 341 (1964).

Second, the Court has held that §2 does not abrogate Congress' Commerce Clause powers with regard to liquor. *Capital Cities Cable, Inc.* v. *Crisp,* 467 U. S. 691 (1984);

California Retail Liquor Dealers Assn. v. *Midcal Aluminum, Inc.*, 445 U. S. 97 (1980). The argument that "the Twenty-first Amendment has somehow operated to 'repeal' the Commerce Clause" for alcoholic beverages has been rejected. *Hostetter,* 377 U. S., at 331–332. Though the Court's language in *Hostetter* may have come uncommonly close to hyperbole in describing this argument as "an absurd oversimplification," "patently bizarre," and "demonstrably incorrect," *ibid.*, the basic point was sound.

Finally, and most relevant to the issue at hand, the Court has held that state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause. *Bacchus,* 468 U. S., at 276; *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573 (1986); *Healy* v. *Beer Institute,* 491 U. S. 324 (1989). "When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry." *Brown-Forman, supra,* at 579.

Bacchus provides a particularly telling example of this proposition. At issue was an excise tax enacted by Hawaii that exempted certain alcoholic beverages produced in that State. The Court rejected the argument that Hawaii's discrimination against out-of-state liquor was authorized by the Twenty-first Amendment. 468 U. S., at 274–276. "The central purpose of the [Amendment] was not to empower States to favor local liquor industries by erecting barriers to competition." *Id.*, at 276. Despite attempts to distinguish it in the instant cases, *Bacchus* forecloses any contention that §2 of the Twenty-first Amendment immunizes discriminatory direct-shipment laws from Commerce Clause scrutiny. See also *Brown-Forman, supra,* at 576 (invalidating a New York price affirmation statute that required producers to limit the price of liquor based on the lowest price they offered out of state);

Healy, 491 U. S., at 328 (invalidating a similar Connecticut statute); *id.*, at 344 (SCALIA, J., concurring in part and concurring in judgment) ("The Connecticut statute's invalidity is fully established by its facial discrimination against interstate commerce . . . . This is so despite the fact that the law regulates the sale of alcoholic beverages, since its discriminatory character eliminates the immunity afforded by the Twenty-first Amendment").

Recognizing that *Bacchus* is fatal to their position, the States suggest it should be overruled or limited to its facts. As the foregoing analysis makes clear, we decline their invitation. Furthermore, *Bacchus* does not stand alone in recognizing that the Twenty-first Amendment did not give the States complete freedom to regulate where other constitutional principles are at stake. A retreat from *Bacchus* would also undermine *Brown-Forman* and *Healy*. These cases invalidated state liquor regulations under the Commerce Clause. Indeed, *Healy* explicitly relied on the discriminatory character of the Connecticut price affirmation statute. 491 U. S., at 340–341. *Brown-Forman* and *Healy* lend significant support to the conclusion that the Twenty-first Amendment does not immunize all laws from Commerce Clause challenge.

The States argue that any decision invalidating their direct-shipment laws would call into question the constitutionality of the three-tier system. This does not follow from our holding. "The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Midcal, supra*, at 110. A State which chooses to ban the sale and consumption of alcohol altogether could bar its importation; and, as our history shows, it would have to do so to make its laws effective. States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. We have previously recog-

nized that the three-tier system itself is "unquestionably legitimate." *North Dakota* v. *United States,* 495 U. S., at 432. See also *id.*, at 447 (SCALIA, J., concurring in judgment) ("The Twenty-first Amendment . . . empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler"). State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent. The instant cases, in contrast, involve straightforward attempts to discriminate in favor of local producers. The discrimination is contrary to the Commerce Clause and is not saved by the Twenty-first Amendment.

IV

Our determination that the Michigan and New York direct-shipment laws are not authorized by the Twenty-first Amendment does not end the inquiry. We still must consider whether either State regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *New Energy Co. of Ind.*, 486 U. S., at 278. The States offer two primary justifications for restricting direct shipments from out-of-state wineries: keeping alcohol out of the hands of minors and facilitating tax collection. We consider each in turn.

The States, aided by several *amici,* claim that allowing direct shipment from out-of-state wineries undermines their ability to police underage drinking. Minors, the States argue, have easy access to credit cards and the Internet and are likely to take advantage of direct wine shipments as a means of obtaining alcohol illegally.

The States provide little evidence that the purchase of wine over the Internet by minors is a problem. Indeed, there is some evidence to the contrary. A recent study by the staff of the FTC found that the 26 States currently allowing direct shipments report no problems with minors'

increased access to wine. FTC Report 34. This is not surprising for several reasons. First, minors are less likely to consume wine, as opposed to beer, wine coolers, and hard liquor. *Id.*, at 12. Second, minors who decide to disobey the law have more direct means of doing so. Third, direct shipping is an imperfect avenue of obtaining alcohol for minors who, in the words of the past president of the National Conference of State Liquor Administrators, "'want instant gratification.'" *Id.*, at 33, and n. 137 (explaining why minors rarely buy alcohol via the mail or the Internet). Without concrete evidence that direct shipping of wine is likely to increase alcohol consumption by minors, we are left with the States' unsupported assertions. Under our precedents, which require the "clearest showing" to justify discriminatory state regulation, *C & A Carbone, Inc.*, 511 U. S., at 393, this is not enough.

Even were we to credit the States' largely unsupported claim that direct shipping of wine increases the risk of underage drinking, this would not justify regulations limiting only out-of-state direct shipments. As the wineries point out, minors are just as likely to order wine from in-state producers as from out-of-state ones. Michigan, for example, already allows its licensed retailers (over 7,000 of them) to deliver alcohol directly to consumers. Michigan counters that it has greater regulatory control over in-state producers than over out-of-state wineries. This does not justify Michigan's discriminatory ban on direct shipping. Out-of-state wineries face the loss of state and federal licenses if they fail to comply with state law. This provides strong incentives not to sell alcohol to minors. In addition, the States can take less restrictive steps to minimize the risk that minors will order wine by mail. For example, the Model Direct Shipping Bill developed by the National Conference of State Legislatures requires an adult signature on delivery and a label so instructing on each package.

The States' tax-collection justification is also insufficient. Increased direct shipping, whether originating in state or out of state, brings with it the potential for tax evasion. With regard to Michigan, however, the tax-collection argument is a diversion. That is because Michigan, unlike many other States, does not rely on wholesalers to collect taxes on wines imported from out-of-state. Instead, Michigan collects taxes directly from out-of-state wineries on all wine shipped to in-state wholesalers. Mich. Admin. Code Rule 436.1725(2) (1989) ("Each outside seller of wine shall submit . . . a wine tax report of all wine sold, delivered, or imported into this state during the preceding calendar month"). If licensing and self-reporting provide adequate safeguards for wine distributed through the three-tier system, there is no reason to believe they will not suffice for direct shipments.

New York and its supporting parties also advance a tax-collection justification for the State's direct-shipment laws. While their concerns are not wholly illusory, their regulatory objectives can be achieved without discriminating against interstate commerce. In particular, New York could protect itself against lost tax revenue by requiring a permit as a condition of direct shipping. This is the approach taken by New York for in-state wineries. The State offers no reason to believe the system would prove ineffective for out-of-state wineries. Licensees could be required to submit regular sales reports and to remit taxes. Indeed, various States use this approach for taxing direct interstate wine shipments, *e.g.*, N. H. Rev. Stat. Ann. §178.27 (Lexis Supp. 2004), and report no problems with tax collection. See FTC Report 38–40. This is also the procedure sanctioned by the National Conference of State Legislatures in their Model Direct Shipping Bill. See, *e.g.*, S. C. Code Ann. §61–4–747(C) (West Supp. 2004).

Michigan and New York benefit, furthermore, from provisions of federal law that supply incentives for winer-

ies to comply with state regulations. The Tax and Trade Bureau (formerly the Bureau of Alcohol, Tobacco, and Firearms) has authority to revoke a winery's federal license if it violates state law. BATF Industry Circular 96–3 (1997). Without a federal license, a winery cannot operate in any State. See 27 U. S. C. §204. In addition the Twenty-first Amendment Enforcement Act gives state attorneys general the power to sue wineries in federal court to enjoin violations of state law. §122a(b).

These federal remedies, when combined with state licensing regimes, adequately protect States from lost tax revenue. The States have not shown that tax evasion from out-of-state wineries poses such a unique threat that it justifies their discriminatory regimes.

Michigan and New York offer a handful of other rationales, such as facilitating orderly market conditions, protecting public health and safety, and ensuring regulatory accountability. These objectives can also be achieved through the alternative of an evenhanded licensing requirement. FTC Report 40–41. Finally, it should be noted that improvements in technology have eased the burden of monitoring out-of-state wineries. Background checks can be done electronically. Financial records and sales data can be mailed, faxed, or submitted via e-mail.

In summary, the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries. Our Commerce Clause cases demand more than mere speculation to support discrimination against out-of-state goods. The "burden is on the State to show that 'the *discrimination* is demonstrably justified,'" *Chemical Waste Management, Inc.* v. *Hunt,* 504 U. S. 334, 344 (1992) (emphasis in original). The Court has upheld state regulations that discriminate against interstate commerce only after finding, based on concrete record evidence, that a State's nondiscriminatory alternatives will prove unworkable. See, *e.g.,*

Maine v. *Taylor,* 477 U. S. 131, 141–144 (1986). Michigan and New York have not satisfied this exacting standard.

V

States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms. Without demonstrating the need for discrimination, New York and Michigan have enacted regulations that disadvantage out-of-state wine producers. Under our Commerce Clause jurisprudence, these regulations cannot stand.

We affirm the judgment of the Court of Appeals for the Sixth Circuit; and we reverse the judgment of the Court of Appeals for the Second Circuit and remand the case for further proceedings consistent with our opinion.

It is so ordered.

TAB 11

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS

03–1116 *v.*

ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER

03–1120 *v.*

ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS

03–1274 *v.*

EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE STEVENS, and JUSTICE O'CONNOR join, dissenting.

A century ago, this Court repeatedly invalidated, as inconsistent with the negative Commerce Clause, state liquor legislation that prevented out-of-state businesses from shipping liquor directly to a State's residents. The

Webb-Kenyon Act and the Twenty-first Amendment cut off this intrusive review, as their text and history make clear and as this Court's early cases on the Twenty-first Amendment recognized. The Court today seizes back this power, based primarily on a historical argument that this Court decisively rejected long ago in *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59, 64 (1936). Because I would follow *Young's Market* and the language of both the statute that Congress enacted and the Amendment that the Nation ratified, rather than the Court's questionable reading of history and the "negative implications" of the Commerce Clause, I respectfully dissent.

I

The Court devotes much attention to the Twenty-first Amendment, yet little to the terms of the Webb-Kenyon Act. This is a mistake, because that Act's language displaces any negative Commerce Clause barrier to state regulation of liquor sales to in-state consumers.

A

The Webb-Kenyon Act immunizes from negative Commerce Clause review the state liquor laws that the Court holds are unconstitutional. The Act "prohibit[s]" any "shipment or transportation" of alcoholic beverages "into any State" when those beverages are "intended, by any person interested therein, to be received, possessed, sold, or in any manner used . . . in violation of any law of such State."[1] State laws that regulate liquor imports in the

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[1] The Webb-Kenyon Act provides:

"The shipment or transportation, in any manner or by any means whatsoever, of any spiritous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the

manner described by the Act are exempt from judicial scrutiny under the negative Commerce Clause, as this Court has long held. See *McCormick & Co.* v. *Brown,* 286 U. S. 131, 139–140 (1932); *Clark Distilling Co.* v. *Western Maryland R. Co.,* 242 U. S. 311, 324 (1917); *Seaboard Air Line R. Co.* v. *North Carolina,* 245 U. S. 298, 303–304 (1917). The Webb-Kenyon Act's language, in other words, "prevent[s] the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws." *Clark Distilling, supra,* at 324.

The Michigan and New York direct-shipment laws are within the Webb-Kenyon Act's terms and therefore do not run afoul of the negative Commerce Clause. Those laws restrict out-of-state wineries from shipping and selling wine directly to Michigan and New York consumers. *Ante,* at 5–6. Any winery that ships wine directly to a Michigan or New York consumer in violation of those state-law restrictions is a "person interested therein" "intend[ing]" to "s[ell]" wine "in violation of" Michigan and New York law, and thus comes within the terms of the Webb-Kenyon Act.

This construction of the Webb-Kenyon Act is no innovation. The Court adopted this reading of the Act in *McCormick & Co.* v. *Brown, supra,* and Congress approved it shortly thereafter in 1935 when it reenacted the Act without alteration, 49 Stat. 877; see, *e.g., Keene Corp.* v. *United States,* 508 U. S. 200, 212–213 (1993) (applying presumption that reenacted statute incorporates settled

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United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spiritous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is prohibited." 27 U. S. C. §122.

judicial construction). *McCormick* considered a state law that prohibited out-of-state manufacturers (as well as in-state manufacturers) from shipping liquor to a licensed in-state dealer without first obtaining a wholesaler permit. The Court held that by shipping liquor into the State without a license, the out-of-state manufacturer "[fell] directly within the terms of" the Webb-Kenyon Act, thus violating it. 286 U. S., at 143; see also *Rainier Brewing Co.* v. *Great Northern Pacific S. S. Co.*, 259 U. S. 150, 152–153 (1922) (holding that under the Webb-Kenyon Act, beer importers must "carry" beer into the State "in the manner allowed by the laws of that State"). While the law at issue in *McCormick* did not discriminate against out-of-state products, the construction of the Webb-Kenyon Act it adopted applies equally to state laws that so discriminate. If an out-of-state manufacturer shipping liquor to an in-state distributor without a license "s[ells]" liquor "in violation of any law of such State" within the meaning of Webb-Kenyon, as *McCormick* held, an out-of-state winery directly shipping wine to consumers in violation of even a discriminatory state law does so as well. The Michigan and New York laws are indistinguishable in relevant part from the state law upheld in *McCormick*.[2]

The Court answers that the Webb-Kenyon Act's text "readily can be construed as forbidding 'shipment or transportation' only where it runs afoul of the States' generally applicable laws governing receipt, possession, sale, or use." *Ante*, at 19. What the Court means by "gen-

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[2]The Court notes that *McCormick* held that the Webb-Kenyon Act only authorized "valid" laws, the suggestion being that *McCormick*'s holding applies only to nondiscriminatory (and hence "valid" laws). *Ante*, at 19. The Court takes this word out of context. By "valid" laws, *McCormick* meant laws not pre-empted by the National Prohibition Act, rather than laws that treated in-state and out-of-state products equally. See 286 U. S., at 143–144 (finding the legislation "valid" because the National Prohibition Act did not pre-empt it).

erally applicable" laws is unclear, for the Court concedes that the Webb-Kenyon Act allows States to pass laws discriminating against out-of-state wholesalers. See *ante*, at 21, 25–26. By "generally applicable [state] laws," therefore, the Court apparently means all state laws except for those that "discriminate" against out-of-state liquor products. See *ante*, at 19–20, 25–26.

The Court leaves unexplained how this ad hoc exception follows from the Act's text. The Act's language leaves no room for this exception. The Act does not condition a State's ability to regulate the receipt, possession, and use of liquor free from negative Commerce Clause immunity on the character of the state law. It does not mention "discrimination," much less discrimination against out-of-state liquor products. Instead, it prohibits the interstate shipment of liquor into a State "in violation of any law of such State." 27 U. S. C. §122. "[A]ny law of such State" means any law, including a "discriminatory" one.

The Court's distinction between discrimination against manufacturers and discrimination against wholesalers is equally unjustified. There is no warrant in the Act's text for treating regulated entities differently depending on their place in the distribution chain: The Act applies in undifferentiated fashion to "any person interested therein." A wine manufacturer shipping wine directly to a consumer is an interested party, just as an out-of-state liquor wholesaler is.[3]

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[3]The Court also states that the "Webb-Kenyon Act expresses no clear congressional intent to depart from the principle . . . that discrimination against out-of-state goods is disfavored." *Ante*, at 19. That is not correct. It is settled that the Webb-Kenyon Act explicitly abrogates negative Commerce Clause review of state laws that fall within its terms. See *supra*, at 3. There is no reason to require another clear statement for each sort of law to which it might apply. The only question is whether, fairly read, the Webb-Kenyon Act covers Michigan's and New York's direct-shipment laws. As I have explained, it does.

The contrast between the language of the Webb-Kenyon Act and its predecessor, the Wilson Act, casts still more doubt on the Court's reading. The Wilson Act provided that liquor shipped into a State was "subject to the operation and effect of the laws of such State . . . to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory." §121. Even if this language does not authorize States to discriminate against out-of-state liquor products, see *ante*, at 15, the Webb-Kenyon Act has no comparable language addressing discrimination. The contrast is telling. It shows that the Webb-Kenyon Act encompasses laws that discriminate against both out-of-state wholesalers and out-of-state manufacturers.

In support of its conclusion that the Webb-Kenyon Act did not authorize States to discriminate, the Court relies heavily on *Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311 (1917). *Ante*, at 18–19. Its reliance is misplaced. *Clark Distilling* held that the Webb-Kenyon Act authorized a nondiscriminatory state law, 242 U. S., at 321–322, and so had no direct occasion to pass on whether the Act also authorized discriminatory laws. Nothing in it implicitly decided that unsettled question in the manner the Court suggests.

To the extent that it is relevant, *Clark Distilling* supports the view that the Webb-Kenyon Act authorized States to discriminate. Contrary to the Court's suggestion, *Clark Distilling* did not say (on pages 321, 322 or elsewhere) that the Webb-Kenyon Act "empowered [States] to forbid shipments of alcohol to consumers for personal use, provided that [they] treated in-state and out-of-state liquor on the same terms." *Ante*, at 18. Instead, *Clark Distilling* construed the Webb-Kenyon Act to "extend that which was done by the Wilson Act" in that its "purpose was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt

of liquor through such commerce in States contrary to their laws." 242 U. S., at 324. The Court takes this passage only to refer to "nondiscriminatory" state laws, *ante*, at 18, but this is not correct. The passage the Court cites implies that the Webb-Kenyon Act also abrogated the nondiscrimination principle of the negative Commerce Clause, since that principle flows from the "immunity characteristic of interstate commerce," no less than any other negative Commerce Clause doctrine. In other words, *Clark Distilling* recognized that the Webb-Kenyon Act took "the protection of interstate commerce away from *all receipt and possession of liquor prohibited by state law*." 242 U. S., at 325 (emphasis added). *Clark Distilling* thus confirms what the text of the Webb-Kenyon Act makes clear: The Webb-Kenyon Act "extended" the Wilson Act by completely immunizing all state laws regulating liquor imports from negative Commerce Clause restraints.[4]

B

Straying from the Webb-Kenyon Act's text, the Court speculates that Congress intended the Act merely to overrule a discrete line of this Court's negative Commerce Clause cases invalidating "nondiscriminatory" state liquor regulation laws, including *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 438 (1898), and *Rhodes* v. *Iowa*, 170 U. S. 412 (1898). *Ante*, at 15–21. According to the majority, *ante*, at

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[4]The Court also opines that, quite apart from the Webb-Kenyon Act, the Wilson Act "expressly precludes States from discriminating." *Ante*, at 19. It does not. The Wilson Act "precludes" States from nothing. Instead, it authorizes them to regulate liquor free of negative Commerce Clause restraints by "subject[ing]" imported liquor "to the operation" of state law, taking state law as it finds it. 27 U. S. C. §121. Even if, as the Court suggests, the Wilson Act does not authorize States to discriminate, *ante*, at 15, the Webb-Kenyon Act extends that authorization to cover discriminatory state laws. The only question here is the scope of the broader, more inclusive Webb-Kenyon Act. The Court's argument therefore adds nothing to the analysis.

20–21, the Webb-Kenyon Act left untouched this Court's cases preventing States from regulating liquor in "discriminatory" fashion. See, *e.g., Scott* v. *Donald,* 165 U. S. 58 (1897) *(Scott); Walling* v. *Michigan,* 116 U. S. 446 (1886); and *Tiernan* v. *Rinker,* 102 U. S. 123 (1880). The plain language of the Webb-Kenyon Act makes the Court's guesswork about Congress' intent unnecessary. But even taken on its own terms, the majority's historical argument is unpersuasive. History reveals that the Webb-Kenyon Act overturned not only *Vance* and *Rhodes*, but also *Scott* and therefore its "nondiscrimination" principle.

The origins of the Webb-Kenyon Act are in this Court's decision in *Leisy* v. *Hardin,* 135 U. S. 100 (1890). *Leisy* held that States were prohibited from regulating the resale of alcohol imported from outside the State so long as the liquor stayed in its "original packag[e]." *Id.*, at 124–125. This rule made it more difficult for States to prohibit the in-state consumption of liquor. Even if a State banned the domestic production of liquor altogether, *Leisy* left it powerless to stop the flow of liquor from outside its borders.

Congress reacted swiftly by enacting the Wilson Act in August of 1890. The Wilson Act authorized States to regulate liquor "upon arrival in such State" whether "in original packages or otherwise," 27 U. S. C. §121, and therefore subjected imports to state jurisdiction "upon arrival within the jurisdiction of the State." *Rhodes, supra,* at 433 (Gray, J., dissenting). The Wilson Act accordingly abrogated *Leisy* and similar decisions by subjecting liquor imports to the operation of state law once the liquor came within a State's geographic borders.

Rather than holding that the Wilson Act meant what it said, three decisions of this Court construed the Act to be a virtual nullity. The first was *Scott, supra.* South Carolina had decided to regulate traffic in liquor by monopolizing the sale and distribution of liquor. All liquor, whether

produced in or out of the State, could be sold to consumers in the State only by the state commissioner of alcohol. *Id.*, at 66–68, n. 1, 92. The law thus prohibited out-of-state manufacturers and wholesalers, as well as their in-state counterparts, from shipping liquor directly to consumers.

The appellee, Donald, was a citizen of South Carolina who had ordered liquor directly from out-of-state shippers for his own personal use, rather than through the state monopoly system as South Carolina law required. *Id.*, at 59; see also *Scott* v. *Donald,* 165 U. S. 107, 108–109 (1897) *(Donald).* South Carolina officials seized the liquor he ordered after it had crossed South Carolina lines, but before he had received it. Donald sued the officials for damages, as well as an injunction allowing him to import liquor directly from out-of-state shippers for his own personal use. *Scott, supra,* at 69–70; *Donald, supra,* at 109–110.

The Court held that South Carolina's ban on the direct shipment of liquor unconstitutionally interfered with the right of out-of-state entities to ship liquor directly to consumers for their personal use, entitling Donald to damages and injunctive relief. *Scott, supra,* at 78, 99–100; *Donald, supra,* at 114; see also *Vance, supra,* at 452 (describing the "ruling" of *Scott* to be that a State could not "forbid the shipment into the State from other States of intoxicating liquors for the use of a resident"). The Court reasoned that the ban on importation, "in effect, discriminate[d] between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." *Scott,* 165 U. S., at 100. The Court reserved the question whether a state monopoly system that allowed consumers to import liquor directly was constitutional; for the Court, it "suffic[ed]" that South Carolina's ban on imports "discriminate[d] against the bringing of such articles in, and importing them from other States." *Id.*, at 101. The Court's excuse for holding that the Wilson Act did not save the State's ban on importation was the same as the

Court's excuse today: that the Wilson Act did not authorize "discriminatory" state legislation. *Ibid.* On this basis, the Court affirmed Donald's damages award. *Ibid.*

In response to *Scott*, Senator Tillman of South Carolina quickly introduced the first version of what became the Webb-Kenyon Act. His bill explicitly attempted to reverse the *Scott* decision. The Senate Report on the bill noted that "[t]he effect of [*Scott* was] to throw down all the barriers erected by the State law, in which she is protected by the Wilson bill, and allow the untrammeled importation of liquor into the State upon the simple claim that it is for private use." S. Rep. No. 151, 55th Cong., 1st Sess., 5 (1897). The Report also addressed *Scott*'s holding that South Carolina's ban on importation was "discriminatory" and adopted the *Scott* dissenter's view that the ban on importation effected "no discrimination against citizens of other States." S. Rep. No. 151, at 5. The bill accordingly would have amended the Wilson Act to grant States "absolute control of . . . liquors or liquids within their borders, by whomsoever produced and for whatever use imported." 30 Cong. Rec. 2612 (1897). The bill passed in the Senate without debate. It failed in the House, perhaps because the House Judiciary Committee added an amendment that barred discrimination against the products of other States, leaving *Scott* intact. H. R. Rep. No. 667, 55th Cong., 2d Sess., 1 (1898).

Meanwhile, the Court continued to narrow the reach of the Wilson Act. In *Rhodes* and *Vance*, the Court even more broadly stripped States of their control over liquor regulation. *Rhodes* did so by holding that the phrase "upon arrival in such State" in the Wilson Act meant that state law could regulate imports only after their delivery to a consignee within the State. 170 U. S., at 421 (internal quotation marks omitted). This meant that States could regulate imported liquor, even when in its original package, but only after it had been delivered to the eventual

consignee. *Rhodes*, in other words, read the Wilson Act to overturn *Leisy*, but not *Bowman* v. *Chicago & Northwestern R. Co.*, 125 U. S. 465 (1888), which had recognized a constitutional right to import liquor in its original package free from state regulation until it reached its consignee. *Rhodes*, *supra*, at 423. Like *Leisy*, then, *Rhodes* seriously hampered the ability of States to intercept liquor at their borders.

Vance involved the constitutionality of a law very similar to the law struck down in *Scott*. After its loss in *Scott*, South Carolina amended its ban on importation. Rather than flatly banning imports unless they went through the state monopoly system, the new law allowed out-of-state wholesalers and manufacturers to ship liquor directly to consumers, but only if the consumer showed that the liquor passed a state-administered test of its purity. *Vance*, 170 U. S., at 454–455.

Vance had two distinct holdings. First, the Court struck down this condition on the direct importation of liquor as an impermissible burden on "the constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use." *Id.*, at 455. The Court derived the right to direct importation primarily from the "ruling" of *Scott* that a State could not "forbid the shipment into the State from other States of intoxicating liquors for the use of a resident." 170 U. S., at 452.

Second, the Court held that, apart from its ban on direct shipments of liquor to consumers, South Carolina's monopoly over liquor distribution was otherwise constitutional. *Id.*, at 450–452. It rejected the argument that this monopoly system was unconstitutionally discriminatory. In particular, the Court reasoned that the monopoly system was not discriminatory because *Scott* had held (a holding that *Rhodes* had fortified) that South Carolina consumers had a constitutional right to import liquor for their own personal use, even if a State otherwise monopo-

lized the sale and distribution of liquor.[5] A monopoly system, the Court implied, was nondiscriminatory under the rule of *Scott* only if it also allowed consumers to import liquor from out-of-state shippers for their own personal use. Three Justices in *Vance* dissented from that holding, on the ground that such a state monopoly system constituted unconstitutional discrimination under, among other cases, *Scott* and *Walling* v. *Michigan,* 116 U. S. 446 (1886). 170 U. S., at 462–468 (opinion of Shiras, J., joined by Fuller, C. J., and McKenna, J.).

Rhodes and *Vance* swept more broadly than *Scott*. *Rhodes* held that States lacked power to regulate imported liquor before it reached the consignee, regardless of whether the liquor was intended for the consignee's personal use, see *supra*, at 10; it did not, as the Court implies, simply repeat *Scott*'s holding that consumers had a right to import liquor for their own personal use. *Ante*, at 17. *Rhodes*' holding, for example, made it easier for bootleggers to circumvent state prohibitions on the resale of imported liquor, because it enabled them to order large quantities of liquor directly from out-of-state interests. For its part, *Vance* held that the right to import for personal use recognized in *Scott* applied even if the State conditioned the right to import directly on compliance with regulatory conditions (*e.g.*, a state-administered purity test). Those broader holdings, consequently, spurred more vigorous congressional attempts to return control of liquor

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[5] See *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 438, 451–452 (1898) ("But the weight of [the argument that the state monopoly system is discriminatory] is overcome when it is considered that the Interstate Commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress [*i.e.*, the Wilson Act] which allows state authority to attach to the original package before sale but only after delivery. *Scott* v. *Donald, supra; Rhodes* v. *Iowa*").

regulation to the States. See R. Hamm, Shaping the Eighteenth Amendment 206–212 (1995) (hereinafter Hamm); Rogers, Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act, 4 Va. L. Rev. 353, 364–365 (1917). The legislative debate in subsequent years accordingly focused on their effect. That may be what misleads the majority into believing that the Webb-Kenyon Act took aim only at *Rhodes* and *Vance*.

Yet early versions of the Webb-Kenyon Act, not to mention the Act itself, also overturned *Scott*'s holding that banning the direct shipment of liquor for personal use was unconstitutionally discriminatory. Like Senator Tillman's initial bill, other early versions of the Webb-Kenyon Act took aim at *Scott*, *Rhodes*, and *Vance*. They made clear that out-of-state liquor was subject to state law immediately upon entering the State's territorial boundaries, even if intended for personal use. See Hamm 206, 208.

The version that eventually became the Webb-Kenyon Act was likewise designed to overturn the holdings of all three cases, and thus to reverse *Scott*'s "nondiscrimination" principle. The House Report says that the bill was "intended to withdraw the protecting hand of interstate commerce from intoxicating liquors transported into a State or Territory and intended to be used therein in violation of the law of such State or Territory." H. R. Rep. No. 1461, 62d Cong., 3d Sess., 1 (1913). Thus, the bill targeted *Scott*'s notion (as applied by *Vance*) that imports destined for personal use were exempt from state regulation. There was no mention of an exception for "discriminatory" state laws, though such an amendment to an earlier version of the Webb-Kenyon Act had been proposed before, see *supra*, at 10; the idea was that imports were subject to state law once within a State's geographic borders, regardless of the law's character. In fact, proponents of the final version of the bill defeated proposed amendments that would have restrained States from restricting

imports destined for personal use, and thereby would have left *Scott* intact. Hamm 215; 49 Cong. Rec. 2921 (1913); see also H. R. Rep. No. 2337, 58th Cong., 2d Sess., 2–3 (1904) (prior unenacted version drawing exception for shipments for in-state personal use).

In contrast to those unenacted amendments, the Webb-Kenyon Act reversed *Scott, Rhodes*, and *Vance* by forbidding the importation of liquor "intended to be received, possessed, sold or in any manner used . . . in violation of any law of such state"—regardless of the nature of the state law or the imported liquor's intended use. See *Seaboard Air Line R. Co.*, 245 U. S., at 304 (noting that the Webb-Kenyon Act allowed States to regulate "irrespective of any personal right in a consignee there to have and consume liquor"). That is why, just four years after its enactment, this Court described the Webb-Kenyon Act as removing "the protection of interstate commerce away from *all receipt and possession of liquor prohibited by state law*." *Clark Distilling*, 242 U. S., at 325 (emphasis added).

The foregoing historical account belies the majority's claim that the Webb-Kenyon Act left *Scott* untouched. The Court reasons that the Webb-Kenyon Act overturned only those decisions that "'in effect afford[ed] a means by subterfuge and indirection to set [state liquor laws] at naught,'" *ante*, at 18 (quoting *Clark Distilling*, *supra*, at 324), a description the Court takes to cover *Rhodes* and *Vance*, but not *Scott*. However, *Scott*'s holding, by precluding state monopoly systems from prohibiting direct shipments of liquor to consumers, "set [state liquor laws] at naught" just as *Rhodes* and *Vance* did. The Court concedes that the Webb-Kenyon Act "close[d] the direct-shipment gap" and that *Scott* recognized a constitutional right for consumers to import liquor directly for their own personal use. *Ante*, at 16, 18. These concessions cannot be squared with Court's simultaneous suggestion, *ante*, at 18–21, that the Webb-Kenyon Act left *Scott* untouched.

The only way to overturn *Scott*'s direct-shipment holding was to abrogate its premise that South Carolina's monopoly system was unconstitutionally discriminatory, as Senator Tillman recognized from the start. See *supra*, at 9–10. Reversing *Scott*'s holding that a State could not ban direct shipments of liquor to consumers was a core concern of the Webb-Kenyon Act.

Repudiating *Scott*'s nondiscrimination holding was also essential to ensuring the constitutionality of state liquor licensing schemes and state monopolies on the sale and distribution of liquor. This is so because the constitutionality of these state systems remained in some doubt even after *Vance*. As explained, *Vance* upheld South Carolina's monopoly system (stripped of its ban on direct shipments) as "nondiscriminatory" only because that system had preserved the constitutional right established in *Scott* and *Rhodes* to send and receive direct shipments of liquor free of state interference. *Supra*, at 11–12. The Court admits that the Webb-Kenyon Act abolished that right. *Ante*, at 18. Had the Webb-Kenyon Act done so without also allowing the States to discriminate, *Vance*'s reasoning implied that the Court was likely to strike down state monopoly systems, and therefore probably licensing schemes as well, as unduly "discriminatory." See 170 U. S., at 451 (equating a state monopoly scheme with a private licensing scheme). The only way to stave off that holding, and so to preserve States' ability to regulate liquor traffic, was to overturn *Scott*'s "nondiscrimination" reasoning. Faced with a Judiciary that had narrowly construed the Wilson Act, see *supra*, at 8–12, Congress drafted the Webb-Kenyon Act to authorize *all* state regulation of importation, whether or not "discriminatory." Just as *Rhodes* read the Wilson Act to repudiate *Leisy* but not *Bowman*, see *supra*, at 10, the majority reads the Webb-Kenyon Act to repudiate *Rhodes* but not *Scott*, committing an analogous error. I would not so construe the Webb-Kenyon Act.

C

The majority disagrees with this historical account primarily by disputing my reading of *Scott*. It reads *Scott* to have held two things: first, that certain discriminatory provisions of South Carolina's monopoly system were not authorized by the Wilson Act, and therefore were unconstitutional; and second, that Donald had a constitutional right to import liquor directly from out-of-state shippers. *Ante*, at 15–17. This recharacterization of *Scott* (together with its mischaracterization of *Rhodes*' holding, see *supra*, at 10) is the basis for the Court's contention that the Webb-Kenyon Act only overruled *Scott*'s second holding, leaving the first untouched. *Ante*, at 18–21.

The Court misreads *Scott*. *Scott* had only one holding: that the state monopoly system unconstitutionally discriminated against Donald by allowing him to purchase liquor from in-state stores, but not directly from out-of-state interests. The issue of direct importation was squarely at issue in *Scott*, not simply "implicit." *Ante*, at 17. This was the only basis, after all, for affirming Donald's damages award for interference with his ability to import goods directly from outside the State. *Scott*'s reasoning that the South Carolina law was unconstitutionally discriminatory was the basis for affirming that award, not a separate and distinct holding.

While South Carolina law also allowed the state alcohol administrator to discriminate against out-of-state liquor when purchasing liquor for sale through the monopoly system, *ante*, at 15, any constitutional defect with those portions of the law would have been at most grounds for allowing Donald to purchase out-of-state liquor through the state monopoly system, as the dissent argued (and as the majority strains to characterize *Scott* 's actual holding, *ante*, at 16). See 165 U. S., at 104–106 (Brown, J., dissenting). But *Scott* rejected that view and held that the broader discrimination effected by the law was grounds for

allowing Donald to import liquor directly himself, bypassing the monopoly system entirely. *Scott*'s holding therefore rested on a conclusion that a ban on direct importation was "discrimination" under the negative Commerce Clause. That conclusion was natural for Justice Shiras, the author of *Scott*, whose view apparently was that all state monopoly systems, even ones that seem nondiscriminatory to our modern eyes, were unconstitutionally discriminatory. See *Vance*, *supra*, at 465, 467 (Shiras, J., dissenting) (citing the nondiscrimination cases *Walling* v. *Michigan*, 116 U. S. 446 (1886), and *Minnesota* v. *Barber*, 136 U. S. 313 (1890)). The Court's narrower understanding of "discrimination" is anachronistic.

Vance confirms this reading of *Scott*. *Vance* correctly characterized *Scott* as establishing a right for consumers to receive shipments of liquor directly from out-of-state sources. 170 U. S., at 452. It also characterized *Scott*'s reasoning as resting on the discriminatory character of the state law. 170 U. S., at 449. These two descriptions, taken together, suggest that the discriminatory character of the law was the basis for *Scott*'s holding that Donald had a constitutional right to receive liquor directly, instead of a separate holding. Moreover, *Vance* also implied that a monopoly system that did not allow consumers to receive liquor directly was unconstitutionally discriminatory. See *supra*, at 11–12. That suggestion supports the idea that *Scott* considered a ban on such direct shipments to be discriminatory.

Brennen v. *Southern Express Co.*, 106 S. C. 102, 90 S. E. 402 (1916), likewise bolsters that *Scott* considered South Carolina's ban on direct importation to be unconstitutionally discriminatory, quite apart from the provisions that authorized the state administrator of alcohol to prefer local products over out-of-state ones. See *ante*, at 15 (describing discriminatory provisions). In *Brennen*, the court considered the constitutionality of a state monopoly sys-

tem that channeled all liquor through state dispensaries by banning direct shipments, but that allowed a consumer to import directly one gallon of liquor per month for his own personal use. 106 S. C., at 107–108, 90 S. E., at 403. Though out-of-state liquor had equal access to the state run liquor dispensaries, see generally 2 S. C. Crim. Code §§794–878 (1912) (providing for otherwise nondiscriminatory state-run monopoly system), the court held that this system unconstitutionally discriminated against out-of-state liquor because it allowed consumers to purchase only a limited quantity of liquor via direct shipments, yet unlimited amounts from state stores. The court noted that "there was no limit to the quantity which a citizen who patronized the dispensaries might buy and keep in his possession for personal use," whereas the law limited direct-shipment purchases to a specific quantity each month. 106 S. C., at 108, 90 S. E., at 403. This, the court reasoned, "was therefore clearly a discrimination made in favor of liquors bought from the dispensaries," and so was unconstitutionally discriminatory under the rule of *Scott*. 106 S. C., at 108, 90 S. E., at 403–404. The court thus recognized that *Scott*'s reasoning implied that a state monopoly system was unconstitutionally discriminatory unless it allowed consumers to purchase liquor directly from out-of-state shippers on the same terms as they could purchase liquor from the state monopoly system.

Brennan refutes the Court's characterization of *Scott*. It shows that the South Carolina system at issue in *Scott* was "discriminatory" because it banned direct importation, not because its provisions authorized the state alcohol administrator to prefer local products. Even the Court concedes that the Webb-Kenyon Act abrogated the right to direct importation recognized in *Scott*. See *ante*, at 16, 18. It follows that the Act also overturned the nondiscrimination reasoning that was the foundation of that right.

In sum, the Webb-Kenyon Act authorizes the discrimi-

natory state laws before the Court today.

II

There is no need to interpret the Twenty-first Amendment, because the Webb-Kenyon Act resolves these cases. However, the state laws the Court strikes down are lawful under the plain meaning of §2 of the Twenty-first Amendment, as this Court's case law in the wake of the Amendment and the contemporaneous practice of the States reinforce.

A

Section 2 of the Twenty-first Amendment provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." As the Court notes, *ante*, at 21, this language tracked the Webb-Kenyon Act by authorizing state regulation that would otherwise conflict with the negative Commerce Clause. To remove any doubt regarding its broad scope, the Amendment simplified the language of the Webb-Kenyon Act and made clear that States could regulate importation destined for in-state delivery free of negative Commerce Clause restraints. Though the Twenty-first Amendment mirrors the basic terminology of the Webb-Kenyon Act, its language is broader, authorizing States to regulate all "transportation or importation" that runs afoul of state law. The broader language even more naturally encompasses discriminatory state laws. Its terms suggest, for example, that a State may ban imports entirely while leaving in-state liquor unregulated, for they do not condition the State's ability to prohibit imports on the manner in which state law treats domestic products.

The state laws at issue in these cases fall within §2's broad terms. They prohibit wine manufacturers from "transport[ing] or import[ing]" wine directly to consumers

in New York and Michigan "for delivery or use therein." Michigan law does so by requiring all out-of-state wine manufacturers to distribute wine through licensed in-state wholesalers. *Ante*, at 5. New York law does so by prohibiting out-of-state wineries from shipping wine directly to consumers unless they establish an in-state physical presence, something that in-state wineries naturally have. *Ante*, at 6–7, 11–12. The Twenty-first Amendment prohibits out-of-state wineries from shipping wine into Michigan and New York in violation of these laws. In holding that the Constitution prohibits Michigan's and New York's laws, the majority turns the Amendment's text on its head.

The majority's holding is also at odds with this Court's early Twenty-first Amendment case law. In *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59 (1936), this Court considered the constitutionality of a California law that facially discriminated against beer importers and, by extension, out-of-state producers. The California law required wholesalers to pay a special $500 license fee to import beer, in addition to the $50 fee California charged for wholesalers to distribute beer generally. *Id.*, at 60–61. California law thus discriminated against out-of-state beer by charging wholesalers of imported beer 11 times the fee charged to wholesalers of domestic beer.

Young's Market held that this explicit discrimination against out-of-state beer products came within the terms of the Twenty-first Amendment, and therefore did not run afoul of the negative Commerce Clause. The Court reasoned that the Twenty-first Amendment's words are "apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes." *Id.*, at 62. The Court rejected the argument that a State "must let imported liquors compete with the domestic on equal terms," declaring that "[t]o say that, would involve not a construction of the Amendment, but a

rewriting of it." *Ibid.* It recognized that a State could adopt a "discriminatory" regulation of out-of-state manufacturers as an incident to a "lesser degree of regulation than total prohibition," for example, by imposing "a state monopoly of the manufacture and sale of beer," or by "channel[ing] desired importations by confining them to a single consignee." *Id.*, at 63. And far from "not consider[ing]" the historical argument that forms the core of the majority's reasoning, *ante*, at 22, *Young's Market* expressly rejected its relevance:

> "The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment. As we think the language of the Amendment is clear, we do not discuss these matters." 299 U. S., at 63–64 (footnote omitted).

The plaintiffs in *Young's Market* advanced virtually the same historical argument the Court today accepts. Brief for Appellees, O. T. 1936, No. 22, pp. 57–75. *Young's Market* properly reasoned that the text of our Constitution is the best guide to its meaning. That logic requires sustaining the state laws that the Court invalidates.

Young's Market was no outlier. The next Term, the Court upheld a Minnesota law that prohibited the importation of 50-proof liquor, concluding that "discrimination against imported liquor is permissible." *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401, 403 (1938). One Term after that, the Court upheld two state laws that prohibited the importation of liquor from States that discriminated against domestic liquor. See *Indianapolis Brewing Co.* v. *Liquor Control Comm'n*, 305 U. S. 391, 394 (1939) (noting that the Twenty-first Amendment permitted States to "discriminat[e] between domestic and imported intoxicating liquors"); *Joseph S. Finch & Co.* v. *McKittrick*, 305

U. S. 395, 398 (1939). In sum, the Court recognized from the start that "[t]he Twenty-first Amendment sanctions the right of a State to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause." *Ziffrin, Inc.* v. *Reeves,* 308 U. S. 132, 138 (1939); accord, *Duckworth* v. *Arkansas,* 314 U. S. 390, 398–399 (1941) (Jackson, J., concurring in result); *Carter* v. *Virginia,* 321 U. S. 131, 138–139 (1944) (Black, J., concurring); *id.*, at 139–143 (Frankfurter, J., concurring). The majority gives short shrift to these persuasive contemporaneous constructions of the Twenty-first Amendment, as JUSTICE STEVENS properly stresses. *Ante,* at 3–4 (dissenting opinion).

B

The widespread, unquestioned acceptance of the three-tier system of liquor regulation, see *ante,* at 2–3, and the contemporaneous practice of the States following the ratification of the Twenty-first Amendment confirm that the Amendment freed the States from negative Commerce Clause restraints on discriminatory regulation. Like the Webb-Kenyon Act, the Twenty-first Amendment was designed to remove any doubt regarding whether state monopoly and licensing schemes violated the Commerce Clause, as the majority properly acknowledges. *Ante,* at 25–26; see also *supra,* at 15. Accordingly, in response to the end of Prohibition, States that made liquor legal imposed either state monopoly systems, or licensing schemes strictly circumscribing the ability of private interests to sell and distribute liquor within state borders. Skilton, State Power Under the Twenty-First Amendment, 7 Brooklyn L. Rev. 342, 345–346 (1938); L. Harrison & E. Laine, After Repeal: A Study of Liquor Control Administration 43 (1936).

These liquor regulation schemes discriminated against out-of-state economic interests, just as Michigan's and

New York's direct-shipment laws do. State monopolies that did not permit direct shipments to consumers, for example, were thought to discriminate against out-of-state wholesalers and retailers by favoring in-state products. See *Vance*, 170 U. S., at 451–452; *supra*, at 11–12. Private licensing schemes discriminated as well, often by requiring in-state residency or physical presence as a condition of obtaining licenses.[6] Even today, the requirement that liquor pass through a licensed in-state wholesaler is a core component of the three-tier system. As the Court concedes, each of these schemes is within the ambit of the Twenty-first Amendment, even though each discriminates against out-of-state interests. *Ante*, at 2–3, 25–26.

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[6]See Note, Economic Localism in State Alcoholic Beverage Laws–Experience Under the Twenty-First Amendment, 72 Harv. L. Rev. 1145, 1148–1149, and n. 25 (1959) (hereinafter Economic Localism); see also 3 Colo. Stat. Ann., ch. 89, §4(a) (1935) (residency requirement); 17 Fla. Stat. Ann. §561.24 (1941) (prohibiting out-of-state manufacturers from being distributors); Ill. Rev. Stat., ch. 43, §120 (Smith-Hurd 1937) (residency requirement); Ind. Stat. Ann. §3730(c) (1934) (residency requirement); 1 Md. Ann. Code, Art. 2B, §13 (1939) (residency requirement); 4B Ann. Laws of Mass., ch. 138, §§18, 18A (1965) (residency requirements); 5 Comp. Laws Mich. §9209–32 (Supp. 1935) (residency requirement); 1 Mo. Rev. Stat. §4906 (1939) (citizenship requirement); Neb. Comp. Stat., ch. 53, Art. 3, §53–328 (1929 and Cum. Supp. 1935) (residency requirement); §53–317 (physical presence requirement); 1 Nev. Comp. Laws §3690.05 (Supp. 1931–1941) (residency and physical presence requirements); 2 Rev. Stat. of N. J. §33:1–25 (1937) (citizenship and residency requirements); N. C. Code Ann. §3411(103)(1½) (1939) (residency requirement); 1 N. D. Rev. Code §5–0202 (1943) (citizenship and residency requirements); Ohio Code Ann. §6064–17 (1936) (residency and physical presence requirements); R. I. Gen. Laws, ch. 163, §4 (1938) (residency requirement); 1 S. D. Code §5.0204 (1939) (residency requirement); Vt. Rev. Stat., Tit. 28, ch. 271, §6156 (1947) (residency requirement); 8 Rev. Stat. Wash. §7306–23G (Supp. 1940) (physical presence requirement); §7306–27 (citizenship and residency requirements); Wis. Stat. §176.05(9) (1937) (citizenship and residency requirements); Wyo. Rev. Stat. Ann. §59–104 (Supp. 1940) (citizenship and residency requirements).

Many States had laws that discriminated against out-of-state products in addition to out-of-state wholesalers and retailers. See Kallenbach, Interstate Commerce in Intoxicating Liquors Under the Twenty-First Amendment, 14 Temp. L. Q. 474, 483–484 (1940); T. Green, Liquor Trade Barriers: Obstructions to Interstate Commerce in Wine, Beer, and Distilled Spirits 12–19, and App. I (1940) (hereinafter Green).[7] For example, 21 States required that producers who had no physical presence within the State first obtain a special license or certificate before doing business within the State, thus subjecting them to two layers of licensing fees. *Id.*, at 12. Thirteen States charged lower licensing fees for wine manufacturers who used locally grown grapes. *Id.*, at 13. Arkansas went so far as to create a blanket exception to its licensing scheme for locally produced wine. See 2 Pope's Digest of Stat. of Ark. §§14099, 14105, 14113 (1937). Eight States taxed out-of-state liquor products at greater rates than in-state products. Green 13. Twenty-nine States exempted exports from excise taxes that were applicable to imports. *Id.*, at 14. At least 10 States (plus the District of Columbia) imposed special licensing requirements on solicitors of out-of-state liquor products. See Harrison & Laine, *supra*, at 194–195. Like the California law upheld in *Young's Market*, 10 States charged wholesalers who dealt in imports greater licensing fees. Economic Localism 1150; Crabb, State Power Over Liquor Under the Twenty-First

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[7] See also, *e.g.*, Ill. Rev. Stat., ch. 43, §115(h) (Smith-Hurd 1937) (special license for growers of locally grown grapes); Comp. Laws Mich. §9209–55 (Supp. 1935) (exemption from malt tax for in-state manufacturers); Nev. Comp. Laws §3690.15 (Supp. 1931–1941) (special importer's fees; lower license fees for manufacturers and wholesalers who deal in in-state products); N. M. Stat. Ann. §72–806 (Supp. 1938) (licensing exemption for in-state wineries); R. I. Gen. Laws Ann., ch. 167, §8 (1938) (authorizing state agency to impose retaliatory tax); Utah Rev. Stat. §46–8–3 (Supp. 1939) (requiring state commission to prefer locally grown products).

Amendment, 12 U. Det. L. J. 11, 27 (1948); Green 13. Many States also passed antiretaliation statutes limiting or banning imports from other States that themselves discriminated against out-of-state liquor. Economic Localism 1152; Green 14. All told, at least 41 States had some sort of law that discriminated against out-of-state products, many if not most of which (contrary to the Court's suggestion, *ante*, at 22) predated *Young's Market* and its progeny. See, *e.g.*, Green App. I. This contemporaneous state practice refutes the Court's assertion, *ante*, at 21–22, 25, that the Twenty-first Amendment allowed States to discriminate against out-of-state wholesalers and retailers, but not against out-of-state products.

Rather than credit the lay consensus this state practice reflects, the Court relies instead on scattered academic and judicial commentary arguing that the Twenty-first Amendment did not permit States to enact discriminatory liquor legislation. *Ante*, at 22. Most of the commentators and judges the Court cites did not adopt the construction of the Amendment the Court embraces. For example, some argued that the Twenty-first Amendment only allowed States to enact nondiscriminatory prohibition laws—*i.e.*, to allow "dry states to remain dry." See Note, 55 Yale L. J. 815, 816–817 (1946); de Ganahl, The Scope of Federal Power Over Alcoholic Beverages Since the Twenty-First Amendment, 8 Geo. Wash. L. Rev. 819, 822–823 (1940); Friedman, Constitutional Law: State Regulation of Importation of Intoxicating Liquor Under the Twenty-First Amendment, 21 Cornell L. Q. 504, 511–512 (1936); Recent Cases, Constitutional Law—Twenty-first Amendment, 85 U. Pa. L. Rev. 322, 323 (1937); W. Hamilton, Price and Price Policies 426 (1938). The Court, by contrast, concedes that a State could have a discriminatory licensing or monopoly scheme. *Ante*, at 25–26. The Court must concede this, given that state practice shows that the Twenty-first Amendment authorized such prac-

tices, and given that the Webb-Kenyon Act allowed States to enforce their own licensing laws, even if they did not prohibit the use and consumption of liquor entirely. Others apparently defended the position that the Twenty-first Amendment did no more than prevent Congress from permitting the direct importation of liquor into a State, leaving the Constitution untouched. See *Joseph Triner Corp.* v. *Arundel*, 11 F. Supp. 145, 146–147 (Minn. 1935); *Young's Market Co.* v. *State Bd. of Equalization of Cal.*, 12 F. Supp. 140, 142 (SD Cal. 1935), rev'd, 299 U. S. 59 (1936). Still others did not state a clear view on the scope of the Twenty-first Amendment. See generally Legislation, Liquor Control, 38 Colum. L. Rev. 644 (1938); Wiser & Arledge, Does the Repeal Amendment Empower a State to Erect Tariff Barriers and Disregard the Equal Protection Clause in Legislating on Intoxicating Liquors in Interstate Commerce?, 7 Geo. Wash. L. Rev. 402 (1939) (arguing that the Twenty-first Amendment did not repeal the Equal Protection Clause). Instead of following this confused mishmash of elite opinion—the same sort of elite opinion that drove the expansive interpretation of the negative Commerce Clause that prompted the Twenty-first Amendment—I would credit the uniform practice of the States whose people ratified the Twenty-first Amendment. See *ante*, at 5 (STEVENS, J., dissenting).

The majority's reliance on the difference between discrimination against manufacturers (and therefore, their products) and discrimination against wholesalers and retailers is difficult to understand. The pre-Twenty-first Amendment "nondiscrimination" principle enshrined in this Court's negative Commerce Clause cases could not have prohibited discrimination against the producers of out-of-state goods, while permitting discrimination against out-of-state services like wholesaling and retailing. See *Lewis* v. *BT Investment Managers, Inc.*, 447 U. S. 27, 42 (1980) (invalidating state law that discriminated against

banks, bank holding companies, and trust companies with out-of-state business operations); *Memphis Steam Laundry Cleaner, Inc.* v. *Stone,* 342 U. S. 389, 394–395 (1952) (invalidating tax that discriminated against solicitors for out-of-state-licensed businesses). Discrimination against out-of-state wholesalers and retailers also risks allowing "economic protectionism." The Court's concession that the Twenty-first Amendment allowed States to require all liquor traffic to pass through in-state wholesalers and retailers shows that States may also have direct-shipment laws that discriminate against out-of-state wineries.

III

Though the majority dismisses this Court's early Twenty-first Amendment case law, it relies on the reasoning, if not the holdings, of our more recent Twenty-first Amendment cases. *Ante,* at 23–26. But the Court's later cases do not require the result the majority reaches. Moreover, I would resolve any conflict in this Court's precedents in favor of those cases most contemporaneous with the ratification of the Twenty-first Amendment.

A

The test set forth in this Court's more recent Twenty-first Amendment cases shows that Michigan's and New York's direct-shipment laws are constitutional. In *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984), this Court established a standard for determining when a discriminatory state liquor regulation is permissible under the Twenty-first Amendment. At issue in *Bacchus* was a Hawaii statute that imposed a 20 percent excise tax on liquor, but exempted certain locally produced products from the tax. The Court held that the Twenty-first Amendment did not save the discriminatory tax. The Court reasoned that the Twenty-first Amendment did not permit state laws that constituted "mere economic protec-

tionism," because the Twenty-first Amendment's "central purpose . . . was not to empower States to favor local liquor industries by erecting barriers to competition." *Id.*, at 276. The Court noted that the State did "not seek to justify its tax on the ground that it was designed to promote temperance or to carry out any other purpose of the Twenty-first Amendment, but instead acknowledg[ed] that the purpose was 'to promote a local industry.'" *Ibid.* (quoting Brief for Appellee Dias, O. T. 1983, No. 82–1565, p. 40). The Court therefore struck down the tax, "because [it] violate[d] a central tenet of the Commerce Clause but [was] not supported by any clear concern of the Twenty-first Amendment." 468 U. S., at 276; accord, *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573, 584–585 (1986) ("[O]ur task . . . is to reconcile the interests protected by the" Twenty-first Amendment and the negative Commerce Clause).

Michigan's and New York's direct-shipment laws are constitutional under *Bacchus*. Allowing States to regulate the direct shipment of liquor was of "clear concern" to the framers of the Webb-Kenyon Act and the Twenty-first Amendment. *Bacchus*, *supra*, at 276. The driving force behind the passage of the Webb-Kenyon Act was a desire to reverse this Court's decisions that had precluded States from regulating the direct shipment of liquor by out-of-state interests. See *supra*, at 14–15. The laws struck down in *Scott* v. *Donald,* 165 U. S. 58 (1897), and *Vance* v. *W. A. Vandercook Co.,* 170 U. S. 438 (1898), required out-of-state manufacturers to ship liquor through the State's liquor regulation scheme—exactly what the Michigan and New York schemes do. By contrast, there is little evidence that purely protectionist tax exemptions like those at issue in *Bacchus* were of any concern to the framers of the Act and the Amendment.

Moreover, if the three-tier liquor regulation system falls within the "core concerns" of the Twenty-first Amendment,

then so do Michigan's and New York's direct-shipment laws. The same justifications for requiring wholesalers and retailers to be in-state businesses equally apply to Michigan's and New York's direct-shipment laws. For example, States require liquor to be shipped through in-state wholesalers because it is easier to regulate in-state wholesalers and retailers. State officials can better enforce their regulations by inspecting the premises and attaching the property of in-state entities; "[p]resence ensures accountability." 358 F. 3d 223, 237 (CA2 2004). It is therefore understandable that the framers of the Twenty-first Amendment and the Webb-Kenyon Act would have wanted to free States to discriminate between in-state and out-of-state wholesalers and retailers, especially in the absence of the modern technological improvements and federal enforcement mechanisms that the Court argues now make regulating liquor easier. *Ante*, at 28–29. Michigan's and New York's laws simply allow some in-state wineries to act as their own wholesalers and retailers in limited circumstances. If allowing a State to require all wholesalers and retailers to be in-state companies is a core concern of the Twenty-first Amendment, so is allowing a State to select only in-state manufacturers to ship directly to consumers, and therefore act, in effect, as their own wholesalers and retailers.

B

The Court places much weight upon the authority of *Bacchus*. *Ante*, at 24–25. This is odd, because the Court does not even mention, let alone apply, the "core concerns" test that *Bacchus* established. The Court instead *sub silentio* casts aside that test, employing otherwise-applicable negative Commerce Clause scrutiny and giving no weight to the Twenty-first Amendment and the Webb-Kenyon Act. *Ante*, at 8–12, 26–30. The Court therefore at least implicitly acknowledges the unprincipled nature of

the test *Bacchus* established and the grave departure *Bacchus* was from this Court's precedents. See 468 U. S., at 278–287 (STEVENS, J., dissenting); *James B. Beam Distilling Co.* v. *Georgia,* 501 U. S. 529, 554–557 (1991) (O'CONNOR, J., dissenting). *Bacchus* should be overruled, not fortified with a textually and historically unjustified "nondiscrimination against products" test.

Bacchus' reasoning is unpersuasive. It swept aside the weighty authority of this Court's early Twenty-first Amendment case law, see 468 U. S., at 281–282 (STEVENS, J., dissenting), because the *Bacchus* Court thought it "'an absurd oversimplification'" to conclude that "'the Twenty-first Amendment has somehow operated to "repeal" the Commerce Clause,'" *id.*, at 275 (quoting *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* 377 U. S. 324, 331–332 (1964)). The Twenty-first Amendment did not impliedly repeal the Commerce Clause, but that does not justify *Bacchus*' narrowing of the Twenty-first Amendment to its "core concerns."

The Twenty-first Amendment's text has more modest effect than *Bacchus* supposed. Though its terms are broader than the Webb-Kenyon Act, the Twenty-first Amendment also parallels the Act's structure. In particular, the Twenty-first Amendment provides that any importation into a State contrary to state law violates the Constitution, just as the Webb-Kenyon Act provides that any such importation contrary to state law violates federal law. Its use of those same terms of art shows that just as the Webb-Kenyon Act repealed liquor's negative Commerce Clause immunity, the Twenty-first Amendment likewise insulates state liquor laws from negative Commerce Clause scrutiny. Authorizing States to regulate liquor importation free from negative Commerce Clause restraints is a far cry from precluding Congress from regulating in that field at all. See *Bacchus, supra,* at 279, n. 5 (STEVENS, J., dissenting). Moreover, *Bacchus*' concern that the Twenty-first Amendment repealed the Commerce

Clause is no excuse for ignoring the independent force of the Webb-Kenyon Act, which equally divested discriminatory state liquor laws of Commerce Clause immunity.

Stripped of *Bacchus*, the Court's holding is bereft of support in our cases. *Bacchus* is the only decision of this Court holding that the Twenty-first Amendment does not authorize the in-state regulation of imported liquor free of the negative Commerce Clause. Given the uniformity of our early case law supporting even discriminatory state laws regulating imports into States, then, Michigan's and New York's laws easily pass muster under this Court's cases.

Nevertheless, in support of *Bacchus*' holding that "state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause," the Court cites *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573 (1986), and *Healy* v. *Beer Institute,* 491 U. S. 324 (1989). *Ante*, at 24–25. At issue in those cases was the constitutionality of protectionist legislation that controlled the price of liquor in other States. *Brown-Forman*, *supra*, at 582–583; *Healy*, *supra*, at 337–338. In invalidating such a statute, *Brown-Forman* found that the Twenty-first Amendment, by its terms, gives "New York only the authority to control sales of liquor in New York, and confers no authority to control sales in other States." 476 U. S., at 585; see also *Healy*, *supra*, at 342–343 (following *Brown-Forman*'s construction). *Brown-Forman* and *Healy* are beside the point in these cases. *Brown-Forman* did not involve a facially discriminatory law. See 476 U. S., at 579. And unlike *Healy*, there is no claim here that the Michigan and New York laws do anything but regulate within their own borders, thereby interfering with the ability of other States to exercise their own Twenty-first Amendment power.

Equally inapposite are the cases the Court cites concerning state laws that violate other provisions of the Consti-

tution or Acts of Congress. *Ante*, at 23–24. Cases involving the relation between the Twenty-first Amendment and Congress' affirmative Commerce Clause power are irrelevant to whether the Twenty-first Amendment protects state power against the negative implications of the Commerce Clause. See *James B. Beam*, *supra*, at 556 (O'CONNOR, J., dissenting); *Bacchus*, *supra*, at 279, and n. 5 (STEVENS, J., dissenting). Similarly, my interpretation of the Twenty-first Amendment would not free States to regulate liquor unhampered by other constitutional restraints, like the First Amendment and the Equal Protection Clause. As this Court explained in *Craig* v. *Boren*, 429 U. S. 190, 205–207 (1976), the text and history of the Twenty-first Amendment demonstrate that it displaces liquor's negative Commerce Clause immunity, not other constitutional provisions.

IV

The Court begins its opinion by detailing the evils of state laws that restrict the direct shipment of wine. *Ante*, at 2–4. It stresses, for example, the Federal Trade Commission's opinion that allowing the direct shipment of wine would enhance consumer welfare. FTC, Possible Anticompetitive Barriers to E-Commerce: Wine 3–5 (July 2003), available at http://www.ftc.gov/os/2003/07/winereport2.pdf (as visited May 12, 2005, and available in Clerk of Court's case file). The Court's focus on these effects suggests that it believes that its decision serves this Nation well. I am sure that the judges who repeatedly invalidated state liquor legislation, even in the face of clear congressional direction to the contrary, thought the same. See *supra*, at 7–12. The Twenty-first Amendment and the Webb-Kenyon Act took those policy choices away from judges and returned them to the States. Whatever the wisdom of that choice, the Court does this Nation no service by ignoring the textual commands of the Constitution and Acts of

Congress. The Twenty-first Amendment and the Webb-Kenyon Act displaced the negative Commerce Clause as applied to regulation of liquor imports into a State. They require sustaining the constitutionality of Michigan's and New York's direct-shipment laws. I respectfully dissent.

TAB 12

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS
03–1116 *v.*
ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER
03–1120 *v.*
ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS
03–1274 *v.*
EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE STEVENS, with whom JUSTICE O'CONNOR joins, dissenting.

Congress' power to regulate commerce among the States includes the power to authorize the States to place burdens on interstate commerce. *Prudential Ins. Co.* v. *Benjamin,* 328 U. S. 408 (1946). Absent such congressional approval, a state law may violate the unwritten rules described as the "dormant Commerce Clause" either by

imposing an undue burden on both out-of-state and local producers engaged in interstate activities or by treating out-of-state producers less favorably than their local competitors. See, *e.g.*, *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137 (1970); *Philadelphia* v. *New Jersey*, 437 U. S. 617 (1978). A state law totally prohibiting the sale of an ordinary article of commerce might impose an even more serious burden on interstate commerce. If Congress may nevertheless authorize the States to enact such laws, surely the people may do so through the process of amending our Constitution.

The New York and Michigan laws challenged in these cases would be patently invalid under well settled dormant Commerce Clause principles if they regulated sales of an ordinary article of commerce rather than wine. But ever since the adoption of the Eighteenth Amendment and the Twenty-first Amendment, our Constitution has placed commerce in alcoholic beverages in a special category. Section 2 of the Twenty-first Amendment expressly provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Today many Americans, particularly those members of the younger generations who make policy decisions, regard alcohol as an ordinary article of commerce, subject to substantially the same market and legal controls as other consumer products. That was definitely not the view of the generations that made policy in 1919 when the Eighteenth Amendment was ratified or in 1933 when it was repealed by the Twenty-first Amendment.[1] On the con-

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[1] In the words of Justice Jackson: "The people of the United States knew that liquor is a lawlessness unto itself. They determined that it should be governed by a specific and particular Constitutional provision. They did not leave it to the courts to devise special distortions of the general rules as to interstate commerce to curb liquor's 'tendency to

trary, the moral condemnation of the use of alcohol as a beverage represented not merely the convictions of our religious leaders, but the views of a sufficiently large majority of the population to warrant the rare exercise of the power to amend the Constitution on two occasions. The Eighteenth Amendment entirely prohibited commerce in "intoxicating liquors" for beverage purposes throughout the United States and the territories subject to its jurisdiction. While §1 of the Twenty-first Amendment repealed the nationwide prohibition, §2 gave the States the option to maintain equally comprehensive prohibitions in their respective jurisdictions.

The views of judges who lived through the debates that led to the ratification of those Amendments are entitled to special deference. Foremost among them was Justice Brandeis, whose understanding of a State's right to discriminate in its regulation of out-of-state alcohol could not have been clearer:

> "The plaintiffs ask us to limit [§2's] broad command. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it. . . . Can it be doubted that a State might establish a state monopoly of the manufacture and sale of beer, and either prohibit all competing importations, or discourage impor-

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get out of legal bounds.' It was their unsatisfactory experience with that method that resulted in giving liquor an exclusive place in constitutional law as a commodity whose transportation is governed by a special, constitutional provision." *Duckworth* v. *Arkansas*, 314 U. S. 390, 398–399 (1941) (opinion concurring in result).

tation by laying a heavy impost, or channelize desired importations by confining them to a single consignee?" *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59, 62–63 (1936).[2]

In the years following the ratification of the Twenty-first Amendment, States adopted manifold laws regulating commerce in alcohol, and many of these laws were discriminatory.[3] So-called "dry states" entirely prohibited such commerce; others prohibited the sale of alcohol on Sundays; others permitted the sale of beer and wine but not hard liquor; most created either state monopolies or distribution systems that gave discriminatory preferences to local retailers and distributors. The notion that discriminatory state laws violated the unwritten prohibition against balkanizing the American economy—while persuasive in contemporary times when alcohol is viewed as an ordinary article of commerce—would have seemed strange indeed to the millions of Americans who condemned the use of the "demon rum" in the 1920's and 1930's. Indeed, they expressly authorized the "balkanization" that today's decision condemns. Today's decision may represent sound economic policy and may be consistent with the policy choices of the contemporaries of Adam Smith who drafted our original Constitution;[4] it is not,

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[2] According to Justice Black, who participated in the passage of the Twenty-first Amendment in the Senate, §2 was intended to return "'absolute control' of liquor traffic to the States, free of all restrictions which the Commerce Clause might before that time have imposed." *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U. S. 324, 338 (1964) (dissenting opinion).

[3] See generally Green, Interstate Barriers in the Alcoholic Beverage Field, 7 Law & Contemp. Prob. 717 (1940); *post*, at 22–25 (THOMAS, J., dissenting).

[4] Cf. *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 169 (1920) (Holmes, J., dissenting) ("I cannot for a moment believe that apart from the Eighteenth Amendment special constitutional principles exist against special drink. The fathers of the Constitution so far as I know ap-

however, consistent with the policy choices made by those who amended our Constitution in 1919 and 1933.

My understanding (and recollection) of the historical context reinforces my conviction that the text of §2 should be "broadly and colloquially interpreted." *Carter* v. *Virginia,* 321 U. S. 131, 141 (1944) (Frankfurter, J., concurring).[5] Indeed, the fact that the Twenty-first Amendment was the only Amendment in our history to have been ratified by the people in state conventions, rather than by state legislatures, provides further reason to give its terms their ordinary meaning. Because the New York and Michigan laws regulate the "transportation or importation" of "intoxicating liquors" for "delivery or use therein," they are exempt from dormant Commerce Clause scrutiny.

As JUSTICE THOMAS has demonstrated, the text of the Twenty-first Amendment is a far more reliable guide to its meaning than the unwritten rules that the majority enforces today. I therefore join his persuasive and comprehensive dissenting opinion.

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proved it").

[5]As he added in that case, "since Virginia derives the power to legislate as she did from the Twenty-first Amendment, the Commerce Clause does not come into play." *Carter* v. *Virginia*, 321 U. S., at 143.

TAB 13

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JERRY BAINBRIDGE, *et al.*,

Plaintiffs,

vs. **Case No. 8:99-CV-2681-T-27TBM**

RICHARD TURNER, Director of the Florida Division of Alcoholic Beverages and Tobacco, in his official capacity,

Defendant.
_____/

ORDER

BEFORE THE COURT is Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188). Defendant does not oppose Plaintiffs' motion.

Plaintiffs have alleged, and Defendant concedes, that Florida's direct shipment law, codified at §§ 561.54(1)-(2) and 561.545(1), Florida Statutes, is unconstitutional under the authority of *Granholm v. Heald*, 125 S.Ct. 1885 (2005), to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

In *Granholm*, the Supreme Court determined that state statutory schemes which limit or prohibit direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers violate the Commerce Clause. 125 S.Ct. at 1907. The Court reasoned that these schemes increase the cost of out-of-state wines, exclude from the market those out-of-state wineries that cannot find a wholesaler, grant in-state wineries a competitive advantage and otherwise discriminate against interstate commerce in violation of the commerce Clause, U.S. Const., Art I, § 8. *See* 125 S.Ct. at 1895-96.

Florida's direct shipment scheme, codified in §§ 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.

The statutes at issue apply on their face to all alcoholic beverages. The only beverage at issue in this case, however, is wine. This Order does not address the constitutionality of these statutes with respect to other types of alcoholic beverages, such as beer and spirits.

Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188) is GRANTED. It is ORDERED AND ADJUDGED that §§ 561.54 and 561.545, Florida Statutes, violate the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

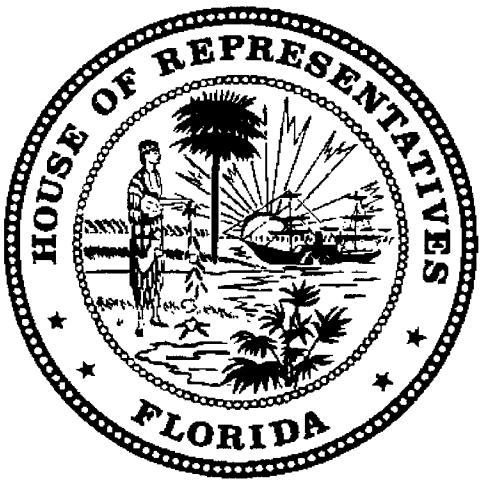
IT IS FURTHER ORDERED that Defendant is ENJOINED from enforcing Florida Statutes §§ 561.54 and 561.545 against out-of-state vendors and producers.

IT IS FURTHER ORDERED that Defendant shall pay costs and reasonable attorneys' fees to Plaintiffs pursuant to 42 U.S.C. § 1988 in an amount to be determined in a subsequent proceeding. The Court reserves jurisdiction to tax costs and award attorneys' fees.

DONE AND ORDERED in chambers this 5th day of August, 2005.

JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record



Business Regulation Committee

Tuesday, September 13, 2005

9:00 AM - 12:00 PM
REED HALL

ADDENDUM "A"

(Replaces Tab 1)

Allan G. Bense
Speaker

Frank Attkisson
Chair

Implementation of Slot Machine Gaming
September 9, 2005
Status Update

During the 2004 general election, voters approved an amendment to the Florida Constitution that permitted two counties, Miami-Dade and Broward, to hold referenda on whether to permit slot machines in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in Miami-Dade and Broward Counties on March 8, 2005. The referendum was defeated in Miami-Dade, but passed in Broward County.

Article X, Section 23, specifies that in the regular session following voter approval of the amendment that "the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment." Both the Senate and House passed their own versions of slot machine implementing legislation during the regular session, but an agreed upon version failed to pass.

Subsequent to the adjournment of the 2005 Legislative Session three separate legal challenges have arisen. In addition, the Broward County Commission has contracted with a consultant to begin drafting rules for the operation of slot machines at pari-mutuel facilities in Broward County.

PPI, Inc. et al. v. DBPR (Filed at DBPR; currently on appeal at the 1st DCA)
Case No. 1D05-2699

Representative Ellyn Bogdanoff petitioned the Department of Business and Professional Regulation (DBPR) for a declaratory statement holding that the slot machine constitutional amendment is of no force or effect until the Florida Legislature enacts implementing legislation and therefore the Division of Pari-Mutuel Wagering has the right to take disciplinary action against any licensee that possesses or operates a slot machine. The Division determined that it has jurisdiction to issue the declaratory statement.

The tracks filed a petition in the First District Court of Appeal asking the court to prohibit DBPR from responding to the petition for declaratory statement, arguing that the declaration is in excess of the Division's jurisdiction.

The First DCA issued an Order to Show Cause to DBPR why the writ of prohibition should not be granted. DBPR filed a Response on July 20 and the appellants filed their Reply on August 15, 2005.

No Casinos, Inc. v. Hartman & Tyner, et al. (Leon County Circuit Court)
Case No. 2005-CA-001188

No Casinos, Inc., a Florida association interested in limiting gambling in Florida, brought suit against the four pari-mutuel facilities and DBPR seeking a declaratory judgment that the amendment is of no force or effect until the Legislature enacts implementing legislation. The tracks responded with a motion to dismiss or, in the alternative, to change venue to Broward County.

In late June, the DBPR filed a cross-claim against the defendants seeking to declare that Amendment 4 is not self-executing and that slot machines are not authorized until the Florida Legislature enacts implementing legislation and an executive agency promulgates rules.

The cross-claim also requested that the court declare that DBPR has the right to discipline any licensee for violation of rules and regulations under its jurisdiction in the event a licensee possess or operates a slot machine at its pari-mutuel facility.

(The claim lists numerous areas in which DBPR might exercise jurisdiction in this respect, such as whether new facilities may be built in light of the restriction to existing facilities; whether licensee may hold a cardroom license and operate slot machines simultaneously; what days and hours the gaming area may operate; regulation and licensing of employees with access to slot machine money; etc.)

Plaintiffs filed a Notice of Voluntary Dismissal on August 22, 2005; however, the cross-claim filed by the DBPR remains outstanding and a hearing on the pari-mutuels Motion to Dismiss the Cross-Claim is scheduled for September 15, 2005.

Hartman & Tyner, Inc. et al. v. Satz (Circuit Court in Broward County)
Case No. 05-07900 (13)
Satz v. Hartman & Tyner, Inc. et al. (4th DCA)
Case No. 4D05-2605

The pari-mutuels filed this suit asking the court to declare that they are entitled to transport, possess, install, and operate slot machines and to permanently enjoin the State Attorney from prosecuting these facilities for transporting, possessing, installing, or operating slot machines at their facilities in Broward County.

At a hearing on June 21, Judge Moe denied the State Attorney's motions for continuance, dismissal, and for failure to join an indispensable party and granted the declaratory and injunctive relief that was requested. The State Attorney was permanently enjoined from initiating criminal or civil action against the plaintiffs for transporting, possessing, installing, or operating slot machines on or after July 1, 2005. The judge retained jurisdiction to allow the Broward County Commission to enact rules and regulations to implement the constitutional amendment.

The rules of appellate procedure provide that the final judgment is stayed (not effective) during the time the appeal is pending unless a party successfully demonstrates a compelling reason to the court to vacate the stay. At an August 22nd hearing on the plaintiffs' motion to vacate the stay Judge Moe found for the plaintiffs. The written order vacating the stay, filed on August 30, 2005, stated that there were compelling circumstances which warranted the lifting of the stay that being "the people's right to have their vote count, and the Legislature's deliberate or negligent thwarting of that most compelling right." An Emergency Motion to reinstate the stay has been filed by State Attorney Satz.

In the meantime, the court has granted the requests from both the Legislature and the Governor to file amicus briefs in the case. Those briefs are due in mid-September.

Implementation of Slots Regulations by Broward County

Pursuant to Judge Moe's ruling, the Broward County Commission on June 28, 2005 directed commission staff to hire a consultant to draft rules and regulations for operation of slot machines at pari-mutuel facilities in Broward County.

Broward County has contracted with Gaming Laboratories International [GLI], an independent gaming device and systems test laboratory, to prepare draft regulations. According to the Broward County Administrator's office, GLI will also identify policy issues for the Board; prepare final regulations which include a comprehensive set of rules, regulations and internal control procedures; and provide an overview of actions and resources required for the County to regulate slots. The consultant will provide the Board with a set of draft regulations in September.